

United States
Circuit Court of Appeals
For the Ninth Circuit. ²

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

THE CITIZEN-NEWS COMPANY,
Respondent.

Transcript of Record

In Two Volumes

VOLUME I

Pages 1 to 338

Upon Petition for Enforcement of an Order of
the National Labor Relations Board

FILED

MAR 25 1942

PAUL P. O'BRIEN,

CLERK

United States
Circuit Court of Appeals
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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BOARD EXHIBIT 1-D

United States of America
Before the National Labor Relations Board
Twenty-first Region
Case No. XXI-C-1394

In the Matter of
THE CITIZEN-NEWS COMPANY
and
LOS ANGELES NEWSPAPER GUILD

COMPLAINT

It having been charged by the Los Angeles Newspaper Guild, hereinafter referred to as the "Union", that The Citizen-News Company, hereinafter referred to as the "Respondent", has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, 49 Stat. 449, the National Labor Relations Board by the Regional Director for the Twenty-first Region, as agent of the National Labor Relations Board, designated by National Labor Relations Board Rules and Regulations, Series 2, as amended, Article IV, Section 1, hereby issues its complaint and alleges the following:

1. Respondent is and at all times hereinafter mentioned has been, a corporation organized and existing under and by virtue of the laws of the State of California, having its principal office and

place of business in Hollywood, California. Respondent, in the course and conduct of said business, prints and publishes a newspaper known as the "Hollywood Citizen-News" and an advertising paper known as the "Hollywood Advertiser," and in addition, engages in job printing for commercial establishments and other newspapers and publications.

2. Respondent, in the course and conduct of its business aforesaid, uses the wire reports of Associated Press and United Press, both of which maintain teletype machines at Respondent's plant; the Associated Press having the privilege of using items of news and intelligence collected and edited by Respondent's employees and in turn transmitted to points outside of the State of California. The items of news collected outside of the State of California by the Associated Press and United Press, and transmitted to Respondent, comprise approximately 21% of the reading matter of the Hollywood Citizen-News. Respondent subscribes to numerous syndicated services which supply materials originating outside the State of California amounting to approximately 17% of the reading matter of the Hollywood Citizen-News. The revenue derived from advertising originating outside of the State of California and appearing in the columns of the Hollywood Citizen-News, amounts to approximately 10% of the total advertising revenue of said newspaper and more than 5% of Respondent's total revenue. Respondent's Hollywood Citizen-News

sells and distributes in excess of twenty-six thousand (26,000) copies daily throughout the State of California, and approximately .5% of the total papers published daily by said Hollywood Citizen-News is shipped outside of the State of California to other states of the United States.

3. Respondent, in the course and conduct of its business aforesaid, causes and has continuously caused large quantities of material, consisting of newsprint, mats, and ink, to be purchased and transported in interstate and foreign commerce and through the states of the United States other than the State of California, to Respondent's plant at Hollywood, California. Respondent uses approximately three hundred and fifty tons of newsprint each month, all of which is shipped to Respondent's plant from British Columbia, Canada. The purchase of said newsprint constitutes 20% of the total expenses of all of Respondent's publications.

4. Los Angeles Newspaper Guild, otherwise known as Local No. 69 of the American Newspaper Guild, affiliated with the Congress of Industrial Organizations, is a labor organization within the meaning of Section 2, subsection (5) of the National Labor Relations Act.

5. Respondent, through its officers, agents and employees, prior to and since on or about the first day of September 1936, has interfered with the self-organization of its employees and with their freedom of choice of representatives for collective bar-

gaining, certain of which conduct has been and is adjudicated by the Board in Case No. C-606 (In the Matter of Citizen-News Company, a Corporation, and Los Angeles Typographical Union, Local No. 174) decided September 1, 1938, and Case No. C-947 (In the Matter of The Citizen-News Company, a corporation and Los Angeles Newspaper Guild) decided March 26, 1940, in which Respondent was ordered to take such action as the Board found would effectuate the policies of the Act. Respondent has complied with neither of said orders.

That despite the fact that Respondent was so ordered to cease and desist from certain conduct as reflected by the orders above referred to, it has continued its plan of interference with the self-organization of its employees and with their freedom of choice of representatives for collective bargaining, such plan consisting of the following acts committed continuously on occasions since on or about July 30, 1938:

(a) By making known to said employees, Respondent's disapproval of and hostility to the Los Angeles Newspaper Guild;

(b) By making known to said employees Respondent's opposition to membership in or assistance to the Los Angeles Newspaper Guild or any other local of the American Newspaper Guild;

(c) By making speeches and distributing propaganda calculated and intended to interfere with the freedom of choice of representatives for collective bargaining by Respondent's employees;

(d) By making speeches and distributing propaganda calculated and intended to force the Respondent's employees to withdraw from the Los Angeles Newspaper Guild; ✓

(e) By spreading rumors that Respondent's employees would lose their employment for joining said Los Angeles Newspaper Guild; ✓

(f) By making from time to time, derogatory statements in disparagement of the Los Angeles Newspaper Guild, its leaders and members; ✓

(g) By disparaging the work of Respondent's employees who were members of the Los Angeles Newspaper Guild, solely because of their Guild activity; ✓

(h) By imposing onerous conditions of work upon Respondent's employees who were members of the Los Angeles Newspaper Guild, solely because they were members of said Guild; ✓

(i) By harassing Respondent's employees who were members of the Los Angeles Newspaper Guild, solely because they were members of said Guild;

By forcing said members to assume menial and undignified tasks for which they were wholly unaccustomed and untrained by reason of their professional qualifications and by reason of the tasks assigned to them while employed by Respondent prior to their joining said Guild;

(j) By refusing to adjust grievances with the Los Angeles Newspaper Guild as a representative of Respondent's employees;

and by these and other acts, Respondent did interfere with, restrain, and coerce its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby did engage in and is engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

6. On or about March 30, 1940, Respondent discharged Karl Schlichter and Leonard Lugoff because said employees joined and assisted the Union and engaged in concerted activities with other employees for their mutual aid and protection; and Respondent refuses and continuously has refused to reinstate said Karl Schlichter and Leonard Lugoff for the reason that they joined and assisted the Union and engaged in concerted activities with other employees for their mutual aid and protection.

7. By its activities described in Paragraph 6 above, and by other acts, Respondent did discriminate in regard to hire and tenure of employment of its employees and did discourage and is discouraging membership in said Union, and thereby did engage in and is engaging in unfair labor practices within the meaning of Section 8, subsection (3) of said Act.

8. By its activities described in paragraphs 6 and 7 hereof, and by other acts, Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act and thereby did engage in and is engaging in unfair labor practices within the meaning of Section 8, subsection (1) of said Act.

9. The acts of Respondent set forth in paragraphs 5, 6, 7, and 8, of this complaint, occurring in connection with the operations of Respondent described in paragraphs 1, 2, and 3, of this complaint, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and have led, and now lead, to labor disputes burdening and obstructing commerce and the free flow of commerce.

The acts of Respondent set forth in paragraphs 5, 6, 7, and 8, of this complaint constitute unfair labor practices affecting commerce within the meaning of Section 8, subsections (1) and (3) and Section 2, subsections (6) and (7) of the National Labor Relations Act.

Wherefore, the National Labor Relations Board, on the 11th day of October, 1940, issues its complaint against The Citizen-News Company, Respondent herein.

NOTICE OF HEARING

Please take notice that on the 12th day of November, 1940, in Room 808, U. S. Post Office and Courthouse Bldg., Los Angeles, California, at 10:00 o'clock in the forenoon, a hearing will be conducted before the National Labor Relations Board, by a Trial Examiner to be designated by it in accordance with its Rules and Regulations, Series 2, as amended, Article IV and Article II, Section 23, on the allegations set forth in the complaint hereinabove set forth, at which time and place you will

have the right to appear in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Twenty-first (21st) Region, acting in this matter as the agent of the National Labor Relations Board, an answer to the foregoing complaint, on or before the 12th day of November, 1940.

Enclosed herewith for your information is a copy of the Rules and Regulations, made and published by the National Labor Relations Board, pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

In witness whereof, the National Labor Relations Board has caused this, its complaint and its notice of hearing, to be signed by the Regional Director for the Twenty-first (21st) Region on the 11th day of October, 1940.

(Seal)

WALTER P. SPRECKELS

Director

21st Region,

National Labor Relations Board

808 U. S. Post Office & Courthouse Bldg.

Los Angeles, California

BOARD'S EXHIBIT 1-H

[Title of Board and Cause.]

ANSWER

Comes now Respondent, The Citizen-News Co., a corporation, and answering the Complaint on file herein, admits, denies and alleges as follows:

1. Answering Paragraph 1 of the Complaint, Respondent admits the allegations of the same.

2. Answering Paragraph 2 of the Complaint, Respondent admits the allegations contained therein for the purpose of this proceeding, but denies either that news or intelligence collected and edited by Respondent's employees is transmitted from Respondent's plant to points outside the State of California, or that news or intelligence collected outside of the State of California by the Associated Press or United Press is transmitted from outside the State of California to Respondent's plant, and alleges that such news and intelligence obtained from the Associated Press and United Press is received by Respondent from their offices within the State of California.

3. Answering Paragraph 3 of the Complaint, Respondent admits the allegations contained therein, except that Respondent denies that all of the newsprint is shipped to Respondent's plant from British Columbia, Canada.

4. Answering Paragraph 4 of the Complaint, Respondent admits the Los Angeles Newspaper Guild is a labor organization as defined in Section

2, Subdivision (5) of the National Labor Relations Act.

5. Answering Paragraph 5 of the Complaint, Respondent specifically denies each and every allegation contained therein, except that it admits that the Board did render two decisions in cases No. C-606 and C-947, the validity of which Respondent denies as to those portions of the decisions relating to the matters complained of by the Board in its Complaint in this proceeding. Respondent further alleges that the Board has in neither of these cases sought to enforce either of the said decisions by appropriate action in the Courts.

Respondent further specifically denies that through its officers, agents and employees, or otherwise, either prior to or since the first day of September, 1936, or at any time, interfered with the self-organization of its employees, or with their freedom of choice of representatives for collective bargaining, or otherwise.

Respondent further specifically denies that it either had, or has, a plan of interference, or has continued any plan of interference, with the self-organization of its employees, or with their freedom of choice of representatives for collective bargaining. Respondent further specifically denies that it had pursued, or is pursuing any plan consisting of the acts alleged in the Complaint, either before or after July 30th, 1938, and further specifically denies that either before or since July 30th, 1938, it had any plan to do, or has done, any of the acts so alleged or as referred to as follows:

(a) Respondent denies that it has made known to its employees Respondent's disapproval of or hostility to the Los Angeles Newspaper Guild, or whether it had any disapproval of or hostility to the said Los Angeles Newspaper Guild;

(b) Respondent denies that it has made known to its employees Respondent's opposition to membership in, or assistance to the Los Angeles Newspaper Guild, or any other local of the American Newspaper Guild, or whether it had any opposition to membership in, or assistance to either the Los Angeles Newspaper Guild or to any local of the American Newspaper Guild;

(c) Respondent denies that it has made speeches or distributed propaganda calculated or intended to interfere with the freedom of choice of representatives for collective bargaining by its employees, or that it has in any other respect attempted to interfere with such freedom of choice;

(d) Respondent further denies that it has made speeches or distributed propaganda calculated or intended to force the Respondent's employees to withdraw from the Los Angeles Newspaper Guild, or that it has in any other manner attempted to force such a withdrawal;

(e) Respondent denies that it has spread rumors that Respondent's employees would lose their employment for joining said Los Angeles Newspaper Guild, or that it has done any other thing which might be so construed;

(f) Respondent denies that it has made from time to time to its employees derogatory statements in disparagement of the Los Angeles Newspaper Guild, its leaders or members, and on the contrary has attempted to see that no such statements were made to its employees;

(g) Respondent denies that it has disparaged the work of those of Respondent's employees who were, or are, members of the Los Angeles Newspaper Guild, either solely because of, or in any manner because of their Guild activity;

(h) Respondent denies that it has imposed onerous conditions of work upon those of Respondent's employees who were, or are, members of the Los Angeles Newspaper Guild, either solely because of, or in any manner because of their membership in the Guild;

(i) Respondent denies that it has harassed its employees who were, or are, members of the Los Angeles Newspaper Guild, either solely because of, or in any manner because they were, or are, members of said Guild; either by forcing said members to assume menial or undignified tasks for which they were wholly unaccustomed or untrained by reason of their professional qualifications, or by reason of the tasks assigned to them while employed by Respondent prior to their having joined said Guild, or otherwise;

(j) Respondent denies that it has refused to adjust grievances with the Los Angeles Newspaper Guild as a representative of Respondent's em-

ployees, and Respondent further denies that it has, by any act or acts, interfered with, restrained or coerced its employees, or any of them, in the exercise of the rights, or any right, guaranteed in Section 7 of the Act, or that it has engaged in, or is engaging in, any unfair labor practice within the meaning of Section 8, Subsection (1) of the Act.

6. Answering Paragraph 6 of the Complaint, Respondent specifically denies each and every allegation contained therein, except that Respondent admits that it did discharge Karl Schlichter and Leonard Lugoff, but not for the reasons alleged in the Complaint, and Respondent specifically denies that it discharged Karl Schlichter or Leonard Lugoff because said employees joined and assisted the union, or engaged in concerted activities with other employees for their mutual aid and protection. Respondent further specifically denies that it has refused, either at any time or continuously, to reinstate the said Karl Schlichter and Leonard Lugoff for the reason that they joined and assisted the union or engaged in concerted activities with other employees for their mutual aid and protection.

Respondent further alleges that pursuant to the terms of a Strike Settlement Agreement, entered into between Respondent and the Los Angeles Newspaper Guild, under date of July 30th, 1938, a copy of which is set forth and annexed hereto as Exhibit "A" and made a part hereof, the said Karl Schlichter failed to resign, as provided in said Agreement, and was discharged by Respondent in

accordance with said Agreement, and not for any of the reasons alleged in the Complaint. Respondent further alleges that with regard to Leonard Lugoff, he was originally discharged in August, 1938, because of unsatisfactory work and that such discharge came shortly after the reinstatement of certain employees who as Guild members were reinstated under the Strike Settlement Agreement; that upon his original discharge, the said Leonard Lugoff appealed to Respondent with the plea that as one of those who was not a member of the Guild at the time of the said strike and had not gone out on strike, he should be treated at least as well as those who were Guild members and had gone out on strike and had been reinstated under the Strike Settlement Agreement, and that since various of the striking Guild employees had been taken back when their services were not needed by Respondent, he believed that he should be reinstated because he was earning at least a part of the compensation which had been paid to him; that Respondent, as the result of this plea by the said Leonard Lugoff, did reinstate him on the same ground as the other employees who were reinstated pursuant to the Strike Settlement Agreement; that after the decision of the Board in the case referred to above, brought by the Los Angeles Newspaper Guild, which decision held that the discharges had not been discriminatory or unfair labor practices, Karl Schlichter and Elizabeth Yeaman were discharged pursuant to said Strike Settlement Agreement, following the resig-

nations of Roger Johnson, Mel Scott and Helen Blair; that thereafter Leonard Lugoff was discharged pursuant to the agreement under which he had been reinstated, and that an additional reason for his second discharge was that his services continued to be unsatisfactory to Respondent during the period of his reinstatement.

7. Answering Paragraph 7 of the Complaint, Respondent specifically denies each and every allegation contained therein, and Respondent specifically denies that by any act or acts did it discriminate in regard to the hire or tenure of employment of any of its employees, or did discourage, or is discouraging, membership in said union, or did engage in, or is engaging in, unfair labor practices within the meaning of Section 7, Subsection (3) of said Act.

8. Answering Paragraph 8 of the Complaint, Respondent specifically denies each and every allegation contained therein, and Respondent specifically denies that it indulged in any of the activities alleged in Paragraph 6 or 7 of the Complaint, or that through any other act or acts it interfered with, restrained, or coerced its employees in the exercise of any right or rights guaranteed in Section 7 of the Act, or did engage in or is engaging in any unfair labor practice or practices within the meaning of Section 8, subsection (1) of said Act.

9. Answering Paragraph 9 of the Complaint, Respondent specifically denies each and every allegation contained therein, and Respondent specifically

denies that it performed the acts set forth in Paragraphs 5, 6, 7 and 8 of the Complaint, in any manner whatsoever, or that any acts by it in connection with the operations of Respondent, whether alleged in those paragraphs, or Paragraphs 1, 2 or 3, or elsewhere alleged in the Complaint, have a close, intimate or substantial relation to trade, traffic or commerce among the several states, or that any act or acts of Respondent have lead, or now lead, to labor disputes burdening or obstructing commerce or the free flow of commerce.

Respondent further specifically denies that any act or acts of Respondent, whether alleged in Paragraphs 5, 6, 7 or 8, or in any part of the Complaint, or otherwise, constitute unfair labor practices affecting commerce within the meaning of Section 8, Subdivisions (1) or (3) or Section 2, Subdivisions (6) or (7) of the National Labor Relations Act.

Wherefore: Respondent, The Citizen-News Co., a corporation, prays the Complaint on file herein be dismissed.

THE CITIZEN-NEWS CO.,
1545 North Wilcox Avenue
Hollywood, California

By HARLAN G. PALMER
President

WILLIS SARGENT
Attorney for Respondent

State of California,
County of Los Angeles—ss.

Harlan G. Palmer, being by me first duly sworn,
deposes and says:

That he is an officer, to-wit: the President of
The Citizen-News Co., the Respondent in the above
entitled action, and that he makes this verification
for and on behalf of said company; that he has read
the foregoing Answer and knows the contents there-
of; and that the same is true of his own knowledge,
except as to the matters which are therein stated
to be without the knowledge of Respondent, and as
to those matters that he believes it to be true.

HARLAN G. PALMER

Subscribed and sworn to before me this 9th day
of November, 1940.

(Seal)

EDITH CETTO

Notary Public in and for the County of Los Angeles,
State of California

EXHIBIT "A"

AGREEMENT

This Agreement, made and entered into at Los
Angeles, California, this 30th day of July, 1938, by
and between the Citizen-News Company, hereinafter
referred to as "the Publisher", and the Los Angeles
Newspaper Guild, a local chartered by the Ameri-
can Newspaper Guild,

Witnesseth:

That whereas, the Publisher and the Guild have previously entered into certain negotiations with respect to the execution of a Collective Bargaining Agreement pertaining to the editorial employees of the Publisher; and whereas certain differences have arisen between the Publisher and the Guild which resulted in a strike of certain employees of the Publisher; and whereas the Publisher and the Guild desire to settle said dispute; and whereas the Publisher and the Guild have this day executed a Collective Bargaining Agreement, as hereinabove set forth:

Now, therefore, in addition to the Collective Bargaining Agreement, it is mutually agreed as follows:

Section 1. The Guild agrees (1) to terminate the strike immediately; (2) to request all organizations with which it is affiliated and other organizations which, to its knowledge, have placed the publications of the Publisher or advertisers in said publications upon any "do not patronize or unfair" list because of the strike, to rescind this action; (3) upon request of the Publisher, to contact any advertiser who may have discontinued his advertising because of the strike and to request that such advertiser renew his advertising.

Section 2. The Publisher agrees to immediate restoration to the payroll of the eighteen strikers and the five discharged employees at rates of pay provided in the Collective Bargaining Agreement.

Section 3. It is agreed that the matter of back pay is to abide final determination of the matter now pending before the National Labor Relations Board, if on the merits and not on the question of the jurisdiction of the National Labor Relations Board, and to be paid by the Publisher only if ordered in such final determination and waived if no such order or a contrary order is made. By final determination is meant either the acceptance by both sides of the determination by the National Labor Relations Board or the final determination thereof by any court or courts to which any of the parties to said proceedings may take such matter.

Section 4. It is agreed that the final determination (defined as above) of the matter now pending before the National Labor Relations Board, if on the merits and not on the question of the jurisdiction of the National Labor Relations Board, is to be accepted by the Publisher and the Guild. In the event it is finally determined that the five discharged employees, or any of them, were lawfully discharged, those so affected by such determination shall promptly resign or be subject to discharge. If such resignations are accepted, or they, or any of them, are discharged, severance and earned vacation pay shall be paid by the Publisher.

Section 5. It is agreed that the final determination of the pending matter before the National Labor Relations Board shall be held equally binding upon the Publisher and the Guild in the case

of Helen Blair, with reference to whom the present pending matter was dismissed without prejudice.

Section 6. It is agreed that the Publisher will immediately dismiss that certain action pending in the Superior Court of the State of California, in and for the County of Los Angeles, entitled: The Citizen-News Company, a corporation, vs. P. M. Connelly et al, No. 429554, and that in connection with certain contempt citations which have been issued in said action, the Publisher will join with the Guild in recommending to the Court that said Orders to Show Cause in re Contempt be discharged and dismissed.

Section 7. It is agreed that the period of the strike shall not be considered a lapse of employment.

Section 8. It is agreed that the provisions of this agreement, except as otherwise provided by Section 4 herein, shall be applicable equally to the four reinstated non-editorial employees as well as to those editorial employees covered by the Collective Bargaining Agreement; that the four reinstated non-editorial employees shall be reinstated at rates of pay not less than those which they received immediately prior to the strike; that they shall be entitled, as well as editorial employees, except as otherwise provided by Section 4 herein, to the protection of that portion of Article II of the Collective Bargaining Agreement which provides that "there shall be no discharge of any of the strikers

for economy reasons prior to January 1, 1939"; that the four reinstated non-editorial employees are equally entitled with editorial employees to the protection of Section 7 of this Agreement, including vacations with pay.

Section 9. The right of the Guild to strike over any grievance arising subsequent to the date of this agreement shall not be impaired.

Section 10. The Publisher and the Guild, including the five discharged employees, accept this Agreement in good faith and agree to conform to and abide by the same, pending final determination of said matters as herein provided.

THE CITIZEN-NEWS COMPANY,
a corporation

By HARLAN G. PALMER

LOS ANGELES NEWSPAPER
GUILD, a Local of the American
Newspaper Guild

By PHILIP M. CONNELLY
Pres.

[Title of Board and Cause.]

INTERMEDIATE REPORT

Statement of the Case

After charges and upon amended charges duly filed¹ by the Los Angeles Newspaper Guild, herein called the Guild, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twenty-First Region (Los Angeles, California), issued its complaint dated October 11, 1940 against The Citizen-News Company, Hollywood, California, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. A copy of the complaint and notice of hearing thereon was duly served upon the respondent and the Guild.

In substance, the complaint alleged that the respondent (1) discriminatorily discharged and refused to reinstate Karl Schlieter and Leonard Lugoff, and thereby discouraged membership in a labor organization: (2) imposed onerous conditions of work upon Guild members, made disparaging statements concerning the Guild, and distributed propaganda calculated to interfere with the freedom of choice of representatives for collective bargaining

(1) Charges were filed April 24, 1940, and amended charges were dated September 27, 1940.

by its employees; (3) refused to adjust grievances with the Guild as the representative of its employees; and (4) by the foregoing acts interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. In its answer dated November 9, 1940 the respondent denied that it had engaged in or was engaging in the alleged unfair labor practices.

Pursuant to notice duly served on the parties, a hearing was held at Los Angeles, California, on November 12, 13, 14, 15, 16, 18 and 19, 1940 before the undersigned, the Trial Examiner duly designated by the Chief Trial Examiner. At the hearing the Board and the respondent were represented by counsel and the Guild by an administrative officer. All parties participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. At the close of the hearing all parties were accorded, but waived, an opportunity to argue orally before the undersigned. The Guild submitted a brief which has been duly considered by the undersigned. Although counsel for the respondent requested, and was granted, an extension of time until December 21, 1940 for filing a brief, no brief was filed.

Upon the record made and from his observation of the witnesses, the undersigned makes, in addition to the above, the following findings of fact:

FINDINGS OF FACT

I. The Respondent and Its Business

The respondent is a California corporation, having its principal office and place of business in Hollywood, California. It owns and publishes the Hollywood Citizen-News, a daily newspaper, and the Hollywood Advertiser, a weekly free-circulation newspaper. The respondent also engages in commercial printing and operates a retail stationery store.

The respondent's Hollywood Citizen-News sells and distributes more than twenty-six thousand (26,000) copies daily throughout the State of California, and about .5 per cent of the total copies published are shipped daily outside the State of California to other states of the United States. Both the Associated Press and the United Press maintain teletype machines at the respondent's plant, and approximately 21 per cent of the reading matter in the Hollywood Citizen-News is comprised of news collected outside the State of California and transmitted by these news services to the respondent. The respondent also subscribes to numerous syndicated services which supply material, originating outside the State of California, amounting to approximately 17 per cent of the reading matter in the Hollywood Citizen-News. About 10 per cent of the total advertising revenue of the said newspaper and more than 5 per cent of the respondent's total revenue is derived from advertising originating outside the State of California and appearing in its columns.

The respondent uses about 350 tons of newsprint per month, all of which is shipped to it from points outside the State of California. The purchase of newsprint constitutes 20 per cent of the total expenses of all the respondent's publications.²

II. The Organization Involved

Los Angeles Newspaper Guild, Local 69 of the American Newspaper Guild, is a labor organization affiliated with the Congress of Industrial Organizations. The Guild admits to membership, among employees of the Hollywood Citizen-News, all employees in the editorial, display advertising, classified advertising, circulation and business administrative departments, with certain exceptions.³

III. The Unfair Labor Practices

A. Background

Certain issues in the instant case are directly traceable to issues decided by the Board on March 26, 1940, in Case No. C-947, wherein the same parties were involved. In that case the Board found

(2) Although the respondent denies that it is engaged in interstate commerce, the findings in Section I herein are based, in substance, upon admissions of the respondent in its answer or testimony given by the respondent's president.

(3) A Guild representative testified that the constitution excepted, as members, employees whose "interests lie with the management as against those of the employees."

that, although the respondent had engaged in unfair labor practices within the meaning of Section 8 (1) of the Act, it had not violated Section 8 (3) of the Act by discharging, on May 14 and 16, 1938, five Guild members, including Karl Schlichter.

At the time of the hearing in Case No. C-947 a strike was current at the respondent's plant. On July 30, 1938, subsequent to the hearing, the respondent and the Guild entered into a strike-settlement agreement which provided for the "immediate restoration to the pay roll" of the five discharged employees, upon the following terms:

"In the event it is finally determined that the five discharged employees, or any of them, were lawfully discharged, those so affected by such determination shall promptly resign or be subject to discharge."

"Final determination" was thus defined in the agreement:

". . . either the acceptance by both sides of the determination by the National Labor Relations Board or the final determination thereof by any court or courts to which any of the parties to said proceedings may take such matter."

B. Interference, Restraint and Coercion

The complaint alleges and the respondent's answer denies that the respondent (1) spread rumors and propaganda that its employees who were Guild members would lose their jobs; (2) imposed onerous conditions or work upon Guild members and forced

them to assume menial and undignified tasks for which they were wholly unaccustomed; and (3) refused to adjust grievances with the Guild as the representative of its employees.

In the Board's Decision and Order, Case No. C-947, the Board found that the respondent had engaged in conduct violating Section 8 (1) of the Act, and to effectuate the purposes of the Act ordered the respondent to post notices stating that it would cease and desist from such conduct. The respondent has not complied with this order. Palmer stated at the hearing in the instant proceedings, "We have no intention to do so until the Court orders us to do so." Nor has the respondent complied with the Board's order in Cases Nos. C-606 and R-712, decided September 1, 1938, in which the Board concluded that the respondent had violated Section 8 (1) and (2) of the Act.

Palmer's effort to discredit the Guild is implicit in the text of his editorial appearing in the August 1, 1938 issue of the *Citizen-News*, immediately after the return of the strikers. In part, the editorial reads as follows, with respect to the returned strikers:

"They once worked for a paper in whose family of employees they shared in the mutual regard that prevailed. They return to meet the bitterness of 225 employees who remained loyal to the paper, while they, other labor organizations, some Democratic organizations and the Communists sought to destroy the business that provides the jobs."

It has been found that by terms of the strike settlement in 1938, the respondent returned to its pay roll the 5 employees whom the Board later concluded had not been discriminatorily discharged. Reinstatement of these employees resulted in confusion, transfers and assignments to reportorial work not previously performed by them. It is unnecessary here to detail each change. No editorial salary was reduced. Roger Johnson, one of the 5 employees reinstated, testified that when the Guild protested these departmental changes, the grievance committee was told by Palmer that the company was "trying their best to fit the returned people into positions which in reality didn't exist and that because they had been required to take these people back it would naturally create some disturbance." It is clear that an unusual situation existed and the record contains insufficient evidence to support a finding that any assignment or transfer was for the purpose of discouraging membership in the Guild. Nor does the evidence support the allegation in the complaint that Guild members were assigned to tasks which were "onerous" or "menial".

Following the failure of Patricia Killoran to attend a cocktail press party to which she had been assigned by Young, sometime after the strike, she was reprimanded and told by the business manager, according to her undisputed testimony, that "his brother had been a very active union man, that he knew more about unions than I would ever know, and he knew about good unions, like the Brother-

hood, but that I was just not to be trusted, after the things we had done." Killoran's testimony is also undisputed that at a time when she was posting a notice on the Guild bulletin board, she was told by managing editor Swisher that "the Guild was not a reputable organization." Killoran's testimony is also undisputed that soon after her participation in the strike, Sternberg, classified advertising manager, told her, in substance, "what a fool I was, and what a monkey I made of myself, and how terrible the C.I.O. was and the strikers were."

The undersigned finds that the foregoing remarks of Young, Swisher and Sternberg, as well as Palmer's editorial, above quoted, were designed to cast discredit upon collective activities of Guild members, and constituted interference with rights guaranteed to employees by Section 7 of the Act.

George Palmer, son of one of the respondent's owners, interposed in an argument between two employees relating to a rumor that the plant would close down unless the Guild was less insistent in its negotiating demands. Palmer declared in effect that he knew the rumor to be based upon fact. Although the record shows that the Guild at about this time accused management of spreading such rumors, by protesting to Sargent, attorney and negotiator for the respondent, there is no evidence that the respondent thereafter took reasonable measures to deny such rumors. While the evidence is insufficient to find that the respondent actually

started rumors of closing the plant, it clearly incurred responsibility for spreading reports authenticated by the son of an owner, by failing to make generally known its real position after the matter had been brought to its attention at a grievance meeting. By failing to deny such rumors, the respondent interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The record contains no evidence to sustain allegations in the complaint that the respondent refused to adjust grievances with the Guild as the representative of its employees.

C. The Discharge of Leonard Lugoff

The complaint alleges that the respondent's answer denies that Leonard Lugoff was discharged on March 30, 1940 because of his union membership and activity. The answer affirmatively alleges (1) that Lugoff was discharged in August 1938 because of his unsatisfactory services; (2) that he was reinstated upon his plea that, since he was not a Guild member and had not gone on strike, he should be treated equal with striking Guild members who were reinstated under the strike-settlement provisions; and (3) that pursuant to the reinstatement agreement he was discharged in 1940 following the Board decision in Case No. C-947 and also because his services had continued to be unsatisfactory to the respondent during the period of reinstatement.

Lugoff began employment with the Citizen-News in 1931. Sometime in 1934 he was assigned to the

classified advertising department and since then, until his final discharge in 1940, engaged in selling classified advertisements as an "outside salesman" in a territory which remained the same throughout his employment.

He joined the Guild in October 1937. He did not take part in the strike of 1938 and was therefore required by the Guild to turn in his membership card.

Lugoff was discharged in August 1938. He testified that he was told by Tobin, manager of his department, that "the strikers were coming back and they had to cut expenses and they decided to let me go." Tobin testified that he informed Lugoff that he was being discharged "because his production had been so low." Since the circumstances then existing support the probability that either or both explanations were made to Lugoff, the undersigned finds that Lugoff was informed that his low production was a cause of his discharge in 1938. In any event, he was not then a Union member. His discharge in 1938 was not discriminatory within terms of the Act.

On August 22, three days later, Lugoff protested his discharge to Palmer. He was reinstated. Lugoff denied Palmer's testimony that he was told his reinstatement would be under the same conditions as those affecting the five employees discharged immediately prior to the strike. It is unnecessary to resolve the conflict on this point, however, since Palmer testified that, had Lugoff's production been

satisfactory in March 1940, he would have been retained. Upon reinstatement Lugoff was notified in writing by business manager Young that he was to be on probation until January 1, 1939.

Examination of records introduced into evidence by the respondent show that during the five-week period in January 1938, Lugoff produced an approximate weekly average of 1000 lines, but that during the same period in 1939 his weekly average was only about 730 lines, a decrease of 27 per cent. Young testified that although he discussed with Tobin, at about this period in 1939, the status of Lugoff's production, "nothing was done at that time." There is no evidence that either Young, who had formally placed Lugoff upon probation, or Tobin, the employee's immediate superior, then or thereafter warned him that unless his production increased he would be discharged.

Lugoff rejoined the Guild in February 1939. At that time there was but one other Guild member in his department, Helen Brichaux, who had taken part in the strike. Lugoff became active in attempting to organize the employees in the classified advertising section. In May he openly circulated a petition authorizing the Guild to represent this group of employees. From the testimony of Tobin, who admitted having heard "rumors" of Lugoff's petition, the undersigned is convinced that by May 1939, the respondent was aware of the employee's union activity. Accompanied by another salesman, Lugoff asked Young, in June, for the establishment

of guaranteed weekly wages. Lugoff's testimony is uncontradicted that, in urging their point, both he and his companion argued that dissatisfaction with wages led to the growth of unions and guilds. Young granted their request. On July 19, and frequently thereafter, Lugoff participated in conferences with management as a Guild committee member. Lugoff testified that in August he was told by Gilman, who passed upon the credit of certain accounts in the display department, that "it would be better for me to quit sticking my nose in Guild affairs and showing less activity because he had it pretty straight that the management was going to weed out everybody connected with the Guild. . . ." Gilman, who was discharged by the respondent subsequent to March 1940, was not called as a witness. Gilman supervised one classification of credits, as assistant to the credit manager. Although the record does not establish that he possessed supervisory powers over employees, the character of his duties plainly placed him in management's confidence, and in a position accurately to reflect the respondent's disapproval of Lugoff's union activities. At about the same time (in August) Lugoff engaged in argument with another employee whom he accused of spreading a rumor to discredit the Guild by stating, according to Lugoff's uncontradicted testimony, that "the management was going to close down the plant if the Guild in its negotiations for a new contract didn't act reasonable." It is also uncontradicted that during this argument George Palmer, son of

one of the respondent's owners, interposed and declared, according to Lugoff, that he "knew that (the rumor) was a fact and he was willing to gamble on it." In March 1940 Lugoff circulated another petition among employees in his department. At the time of his discharge he was the only Guild member among the outside salesmen.

With respect to evidence adduced by the respondent in support of its contention that Lugoff was discharged because of his unsatisfactory production, the record is clear that his lineage production in 1939 was less than in 1937.⁴ The respondent introduced in evidence comparative summaries of Lugoff's lineage and earnings record which show (1) that from July 6, 1939 until the end of that year, his sales earned him a weekly average of \$21.41, and that from the first week in 1940 until his discharge his average weekly earnings were \$19.72; (2) that during the aforementioned period in 1939 his weekly lineage production was 646 lines, while in 1940 until his discharge he averaged 567 lines each week.

Palmer testified that following his receipt of noti-

(4) According to a summary of production records submitted by the respondent, each of the four outside salesmen lost or gained in annual lineage production, from 1937 to and including 1939, as follows:

Reed	6.9% decrease
Allen	30. % decrease
McKellar	10.2% increase
Lugoff	35.7% decrease

fication of the Board's decision in Case C-947 he conferred with Young, was informed that Lugoff's production record had not improved, and that he therefore discharged him.

No detailed analysis of Lugoff's lineage records, however, had been made by management prior to the hearing. Tobin, manager of Lugoff's department, testified that he had never made lineage report on Lugoff. Thus it is clear that, at the time of discharging Lugoff, Palmer did not have before him the comparative analysis above quoted.

The undersigned has examined the detailed weekly production records of each of the four classified salesmen, and is convinced that from them, by arbitrarily selecting certain periods for analysis and comparison, conflicting and misleading conclusions may be drawn not only as to the relative productivity of the four salesmen, but also as to the relative production of a single employee from month to month and year to year. For this reason and because, as above found, the respondent made no statistical analysis of Lugoff's lineage records prior to his discharge, the undersigned considers them as providing doubtful support to the respondent's contention that he was, in fact, discharged because of low production.

Of material significance, however, is the fact determined from the above-mentioned records that, for the five-week period in January 1939, Lugoff's lineage production had dropped approximately 27 per cent from that of the same period in 1938. De-

spite this marked decrease, and although he had been specifically placed upon probation until January 1939, he was not discharged. This fact is persuasive that the respondent did not consider production as a factor which was determinant of Lugoff's retention on the pay roll. He was not thereafter warned that he was still on probation, or that unless his production increased he would be discharged.

In summary, the undersigned is convinced that the real reason for Lugoff's discharge is to be found in the respondent's long-existent antipathy toward the Guild and in Palmer's resentment toward an employee who, reinstated upon the plea that he had left the Guild and had not taken part in the strike, thereafter became notably active in organizing employees in his department. Lugoff failed to heed the warning of Gilman that he had better show "less activity," and discharge was the penalty. Furthermore the undersigned finds to be without merit Palmer's contention that he delayed discharge of Lugoff until March 30, when Schlicter and Yeaman were discharged, for the reason that he had incurred an obligation to retain him by virtue of the strike-settlement agreement. To find this contention meritorious would require the undersigned to ignore documentary evidence (1) that he was placed upon probation until January 1, 1939, and (2) Palmer's letter discharging Lugoff, which stated only that his services were unsatisfactory.

The undersigned finds that the respondent, by discharging Leonard Lugoff on March 30, 1940, discriminated in regard to the hire and tenure of his employment, thereby discouraging membership in the Guild, and thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

D. The Discharge of Karl Schlichter.

Pursuant to the strike settlement agreement referred to in Section III A above, the five discharged employees were restored to the respondent's pay roll. Prior to March 26, 1940, 3 of these 5 employees and Karl Schlichter were notified by letter that their employment was terminated. Yeaman's discharge is not in issue. Notification to Schlichter read as follows:

This notice is to terminate your services with us effective this day. We consider you incapable of the type of production we desire from a man in your post.

The complaint in the instant case alleges that Schlichter was discharged on March 30, 1940 because of his union activities. In its answer the respondent denies this allegation but alleges that Schlichter was discharged (1) in accordance with the agreement of July 30, 1938, and (2) because his services continued to be unsatisfactory to the respondent during the period of his reinstatement.

Harlan G. Palmer, president of the respondent

and publisher of the Hollywood Citizen-News, testified that he received notification of the Board decision, above referred to, on March 28, and that when no resignation from Schlichter had been received by March 30, he was discharged. Palmer further testified:

“* * * my interpretation of the Board’s decision was that the Board dismissed the action so far as the question of the regularity of the discharge of these five people was concerned. That was the order, as I read the order, dismissing that action. Therefore, there was no action pending, the Board had held it was legal and dismissed the action, and the day the Board signed the order there was no action then, nothing in existence charging us with the unlawful discharge of the five employees.”

Palmer admitted that he did not communicate with the Guild, prior to the actual discharge of Schlichter or attempt to find out if the Guild would accept the Board’s Decision and Order. At the hearing and in its brief, the Guild contended, in effect, that the respondent acted in bad faith by taking summary action with respect to Schlichter before the Board decision had been accepted by the Guild. The undersigned does not consider that the dispute, as to whether the respondent’s discharge of Schlichter was consistent with or in violation of the terms of the strike settlement, is an issue for his determination. Since the Board found that the discharge in 1938 was not in violation of the Act,

it is clear that the respondent was under no obligation to restore Schlieter to the same substantially equivalent, or any employment.

It is plain, however, from the answer to the complaint and the testimony of Palmer, that the respondent's position with respect to Schlieter's discharge does not rest solely upon its contention that the Board decision absolved it from obligations incurred under the agreement. Palmer testified:

“* * * if Schlieter's services were satisfactory
* * * he would have been kept.”

Within a few days after discharging Schlieter, the respondent informed the Guild not only that he had been dismissed under terms of the agreement but that “his services were not satisfactory.”

It is therefore clear that, prior to the March 30 discharge, the respondent considered that an employer-employee relationship existed between itself and Schlieter. Having again accorded him the status of an employee in 1938, the respondent could not thereafter, with impunity and regardless of any agreement with the Guild, deprive Schlieter of any or all rights guaranteed to employees by the Act.

Thus the sole question for resolution here is whether or not the respondent, following his re-employment, discriminated as to the terms or tenure of Schlieter's employment because of his union membership or activity.

In its Decision and Order, in Case C-947, the Board found that “There is no evidence that

Schlieter was a particularly active member of the Guild." In 1938, however, following his re-employment, he became treasurer and, in 1939, chairman of the Citizen-News unit of the Guild. He participated in a number of grievance meetings with the management.

Upon his return to the respondent's pay roll, Schlieter did not resume his previous duties as promotion manager. He was assigned to assist Sternberg, who was in charge of the national advertising department. In many respects Schlieter's new work differed from that which he had previously performed. However, the record contains no convincing evidence that this assignment to new tasks was discriminatory in character. It is unnecessary here to detail the specific duties assigned to him. The record establishes that all of them fell within the usual requirements of the department. Nor is the undersigned persuaded that any of his assignments were onerous, menial or imposed upon him because of his union membership.

It is clear from the testimony of both Sternberg and Schlieter that the latter was dissatisfied with his new work. Sternberg's testimony is uncontradicted that when he suggested to Schlieter "he get out and call on some accounts and do some selling," Schlieter replied "he wasn't interested in selling or learning to sell." Sternberg complained to business manager Young, according to his testimony, that he would "like to have a man working with me that was interested in the department and in get-

ting along, going somewhere in there.” Schlieter made errors in surveying merchandise stocks at local stores for report to national advertisers. Sternberg testified that when Schlieter was first assigned to the national department, he advised him, “The thing (the strike) is all over now and there is plenty of work for both of us, lots of it, and if we just forget all about it and get in and dig that he would be able to accomplish quite a lot,” but that Schlieter replied, “It wouldn’t be of any use because if the Guild loses the case I will be out of here anyway.” Schlieter denied making this statement. From his observation of the two witnesses on the stand, the undersigned does not credit Schlieter’s denial, and finds that the conversation occurred substantially as quoted from Sternberg’s testimony.

Schlieter testified that on one occasion, in late 1938 or early 1939, he was warned by Swisher and Young, managing editor and business manager respectively, for talking with Miss Killoran, an active Guild member in the editorial department, and that he was unjustly accused of discussing Guild matters with her during working hours. The evidence does not support a conclusion that, because management reprimanded Schlieter in 1938 or 1939 it must follow that he was discharged in 1940 because of union activity.

The evidence establishes that neither during the strike nor thereafter has the respondent assigned anyone to the position of promotion manager. Promotion work has been variously distributed among

department heads and for a period in 1939 and early 1940 certain special features were prepared by a free-lance publicist. The Board found, in its Decision and Order in Case No. C-947, that the choice of Schlieter for discharge in 1938, "whose job was a newly created one and whose work was not immediately productive in a concrete way, was not an unreasonable move for an employer to make when faced with losses and the need for retrenchment." There is no persuasive evidence in the record of these proceedings which would support a finding that the respondent discriminated against Schlieter by not reopening the position from which the Board found he was justifiably discharged in 1938.

While the case is not entirely free from doubt, the undersigned finds that the evidence does not support the allegation in the complaint that Schlieter's discharge in March 1940 was because of his union membership and activity.

IV. The Effect of the Unfair Labor Practices upon Commerce

The undersigned finds that the activities of the respondent set forth in Section III B and C above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that the respondent has engaged in unfair labor practices within the meaning of Section 8 (1) and (3) of the Act, it will be recommended that it cease and desist therefrom, and that it take certain affirmative action to effectuate the policies of the Act.

With respect to Leonard Lugoff, it will be recommended that the respondent offer to him immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and to make him whole for any loss of pay suffered as a result of the respondent's discrimination, by paying to him a sum of money equal to the amount he would normally have earned as wages from March 30, the date of the discrimination against him, to the date of the offer of reinstatement, less his net earnings during such period.⁵

(5) By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N. L. R. B. 440. Monies received for work performed upon federal, state, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N. L. R. B.*, decided by United States Supreme Court, November 12, 1940.

CONCLUSIONS OF LAW

1. Los Angeles Newspaper Guild is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment and terms of employment of Leonard Lugoff, thereby discouraging membership in the Guild, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

3. By interfering with, restraining and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

5. The respondent has not engaged in unfair labor practices with respect to Karl Schlichter.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, the undersigned hereby recommends that the respondent, The Citizen-News Company, Hollywood, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Los Angeles Newspaper Guild, or any other labor organization

of its employees, by discharging, or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purposes of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the undersigned finds will effectuate the policies of the Act:

(a) Make whole Leonard Lugoff for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned as wages from the date of his discharge to the date of the offer of reinstatement, less his net earnings during said period;

(b) Post immediately in conspicuous places throughout its plant in Hollywood, California, and maintain such notices for a period of sixty (60) days from the date of the posting, notices to its employees stating (1) that the respondent will not engage in the conduct which it is recommended to cease and desist in paragraph 1 (a) and (b)

of these recommendations; (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of these recommendations; and (3) that the respondent's employees are free to become or remain members of the Los Angeles Newspaper Guild, and that the respondent will not discriminate against any employee because of membership or activity in this organization.

(c) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Intermediate Report what steps the respondent has taken to comply herewith.

It is further recommended that the complaint, in so far as it alleges that the respondent engaged in unfair labor practices with respect to the hire and tenure of employment of Karl Schlieter, be dismissed.

And it is further recommended that unless, on or before twenty (20) days from the receipt of the Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action above recommended.

Any party may, within thirty (30) days after the date of the order transferring this case to the Board, pursuant to Section 32 of Article II of National Labor Relations Board Rules and Regulations, Series 2, as amended, file a brief with the Board, Shoreham Building, Washington, D. C. Should any party desire permission to argue orally

before the Board, request therefor must be made in writing to the Board within twenty (20) days after the date of the order transferring the case to the Board, pursuant to said Section 32 of said Article II.

C. W. WHITEMORE,
Trial Examiner.

Dated: January 13, 1941.

[Title of Board and Cause.]

STATEMENT OF RESPONDENT'S
EXCEPTIONS

TO THE INTERMEDIATE REPORT

Comes now the Respondent, The Citizen-News Company, a corporation, and excepts to the Intermediate Report of Trial Examiner C. W. Whittemore, bearing date of January 13th, 1941, in the following particulars, to-wit:

As a preliminary exception to the Examiner's statement of the case, attention is called to the statement of the Examiner that "Although counsel for the respondent requested, and was granted, an extension of time until December 21, 1940 for filing a brief, no brief was filed." While the matter is unimportant, it reveals the ease with which the Examiner has permitted himself to drift into inaccuracies, as the official record discloses no request by Respondent for an extension of time

for filing a brief and so far as the recollection of Respondent is concerned, no such extension was requested by it.

FINDINGS OF FACT

I. The Respondent and Its Business

(1) Respondent excepts to the Findings of Fact upon the ground that the Examiner neglected to state that the approximately twenty-one (21%) per cent. of the reading matter in the Hollywood Citizen-News, comprised of news collected outside the State of California, was transmitted to it by the Associated Press and United Press from their respective offices located within the State of California, and that news does not come directly to Respondent, or its publications, from without the State of California. (P. 17, L. 25—P. 18, L. 12)

II. The Organization Involved

No exceptions.

III. The Unfair Labor Practices

A. Background

No exceptions.

B. Interference, Restraint and Coercion

(1) Respondent excepts to that portion of the Report of the Examiner in which he refers to case No. C-947, in which the Board ordered the Respondant "to post notices that it would cease and desist from such conduct", and while calling attention that

Respondent has not complied with this order and that Palmer testified, "We have no intention to do so until the Court orders us to do so.", the Examiner neglected to state that although a considerable period of time has elapsed since the decision, the Board has thus far not deemed that its case justified an application to the Court for the enforcement of the order.

(2) That the Examiner, in calling attention to the fact that Respondent has not complied with the Board's order in Case No. C-606 and R-712, decided September 1st, 1938, in which the Board also concluded that Respondent had violated Section 8 (1) and (2) of the Act, failed to mention the further fact that the Board has not seen fit to ask the Court for an order to enforce its order in this case; and, furthermore, that the holding of an election which was to have been held within forty-five (45) days, pursuant to the order of the Board, has never been held although approximately seventeen (17) months have elapsed since the date of that order.

(3) That as evidence of interference, restraint and coercion, the Examiner referred to an editorial appearing in the issue of the Hollywood Citizen-News on August 1st, 1938, (Board's Exhibit #15), fourteen (14) months prior to the hearing in this case, and cited only one paragraph therefrom without making further reference to the entire editorial, which was produced in evidence during the trial of this case and a copy of which is attached hereto as Exhibit "A" to these Exceptions; and that the

Examiner failed to state that the record disclosed no evidence that the effect of this editorial did constitute interference, restraint or coercion upon employees of Respondent, and that on the contrary the testimony of Leonard Lugoff, one of the employees whose dismissal caused the case, indicated that he had no fear and believed there was no basis for any fear; (P. 231, L. 3-10); That the Examiner did not seek to determine whether the statements appearing in said editorial were true or whether they were the honest opinions of the writer of the editorial; that nothing in the record indicates any effort to disprove any of the statements contained in the editorial or to challenge the sincerity of the writer; and that the Examiner, in seeking to prohibit the publication of future editorials of a similar nature, did not concern himself with the problem as to whether they might be true or false.

(4) That as evidence of interference, restraint and coercion, the Examiner quoted from the testimony of Patricia Killoran, with regard to statements allegedly made to her by Messrs. Young, Swisher and Sternberg, which the Examiner states constituted interference with rights guaranteed to employees by Section 7 of the Act, but did not make a finding as to whether or not Miss Killoran was telling the truth in her testimony or whether the statements were true or false, or whether Miss Killoran was a credible witness whose word was to be taken at its face value; that the Examiner made no finding *at* to whether the other statements con-

tained in the testimony of Miss Killoran, if actually made by the persons to whom they were attributed, were true (Ps. 409-494); that the Examiner failed to point out that these statements, if made at all, were made in August, 1938, just after the close of a bitter eleven (11) weeks strike during which one-half ($1\frac{1}{2}$) the Guild members had refused to join the twenty-five (25) employees who did strike and had remained at work with the two hundred twenty-five (225) employees who refused to go on strike; that the Examiner failed to state that Miss Killoran is, and has been, the Chairman of the Citizen-News Unit of the Guild since March 30th, 1940 (P. 453, L. 7-12) and may therefore be deemed to have a strong self-interest and possible prejudice in the subject matter of the testimony given by her; that the Examiner failed to refer in his Report to the testimony of Mr. Young: "Well, as a matter of fact, I can't talk about these things (unions) because I am not allowed to.", or Miss Killoran's emphatic reply: "Well I can talk about them." (P. 425, L. 1-3); that the Examiner failed to point out that Miss Killoran had been very active in her leadership in the Guild for some time back, had mailed out some twelve (12) to fourteen (14) pieces of literature to prospective Guild members within the Citizen-News organization (P. 455, L. 1 to P. 456, L. 10); that she had boasted of the achievements of the Guild in its contracts with the Citizen-News and emphasized the advantages of member-

ship in the Guild; the Examiner also failed to point out that in May, 1939, she openly solicited the Guild membership of an employee working at the front counter in the business office of Respondent (P. 484, L. 24 to P. 485, L. 10); that Miss Killoran in her testimony demonstrated that the opinions expressed with regard to her by others in Respondent's employ had no interference, restraint or coercion upon her Guild activities and that there was no evidence that anyone else heard the remarks, if made; and that Respondent in its testimony made no effort to question the trustworthiness or credibility of Miss Killoran, nor attempted to make either or both of them an issue in this case.

(5) The Examiner in referring to testimony of an argument in 1939 between two (2) employees (P. 177, L. 9 to P. 180, L. 8) relative to a rumor that the plant would close down unless the Guild was less insistent in its negotiating demands and that George Palmer, stated to be a son of one of Respondent's stockholders, commented that he knew the rumor to be based on fact, failed to point out that the testimony disclosed that George Palmer was not the son of Harlan G. Palmer, the Publisher of the Citizen-News, and the individual referred to by the Examiner as "Palmer"; that George Palmer was not working in a supervisory capacity, but as an employee with equal rights to engage in verbal argument with Lugoff and Badovinac, and that there is no testimony in the record to indicate that the said Harlan G. Palmer, or

any supervisory employee, at any time engaged in spreading the rumor that the plant would close down or made any such statement; that the Examiner failed to state that Mr. Willis Sargent, the Representative of the paper in its negotiations with the Guild, proceeded immediately thereafter to conclude a contract concerning which the Guild subsequently expressed its pleasure and pride, thus demonstrating clearly that the rumors, if any, were false and that nobody had been interfered with, restrained or coerced, and that Palmer denied ever having made any such statements (P. 738, L. 7-21); the Examiner in his finding that "by failure to deny such rumors Respondents interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act" seemed to have assumed that the Management either was responsible for the rumors or that it should prohibit non-supervisory employees from holding discussions with, or expressing disagreement with, any member of the Guild, and it is submitted that there is not the slightest evidence of the former and that for the Management to attempt the latter would be going far beyond the Management's province as to non-supervisory employees.

C. The Discharge of Leonard Lugoff

Respondent excepts to the Findings of the Examiner with regard to Leonard Lugoff as follows:

(1) That the Examiner failed to include in his Intermediate Report certain facts of Lugoff's employment history (P. 200, L. 8 to P. 205, L. 18);

that he had been originally employed by the Hollywood Citizen, Respondent's predecessor, and had been discharged by that paper (P. 202, L. 7-10); that he had gone to work for the Hollywood News and was so working when the Hollywood Citizen bought the Hollywood News in 1931; that after beginning his employment with the Citizen-News in 1931, as stated by the Examiner, he resigned in 1932 to go to work for the Los Angeles Evening Herald, for which he worked for a period of six (6) months (P. 204, L. 15-18); that he then took a position with the Venice Vanguard and Culver City Star, which he held for only one (1) year (P. 204 L. 18-21); immediately following that he did nothing for six (6) months (P. 204 L. 22 to P. 205 L. 21); he then returned to the Citizen-News in 1934 as a subscription solicitor (P. 205 L. 8-10); that about six (6) months later he changed his work to that of the Classified Advertising Department (P. 205 L. 22 to P. 206 L. 9); and that these frequent changes of work, whether voluntary or not, indicated either an unwillingness or inability to become located in the right type of work and to continue in the same.

(2) That the Examiner, in finding that Lugoff's discharge for low production by the Classified Advertising Manager, Mr. Tobin, in August, 1938, and in finding that this discharge was not discriminatory since Lugoff was not at the time a union member, indicated that in his opinion it was un-

necessary to resolve the conflict as to the conflicting testimony of Palmer and Lugoff as to whether or not the latter's reemployment was accompanied by a statement that his reinstatement would be under the same terms and conditions as those affecting the five (5) employees discharged immediately prior to the strike; that the Examiner did not accurately quote Palmer's testimony with regard to this (P. 80 L. 12-24); that the fact that Palmer did testify that "had Lugoff's production been satisfactory in 1940 he would have been retained" does not affect the importance of the conflict between the testimony of Palmer and Lugoff but did, on the other hand, indicate a willingness on the part of the Management to retain Lugoff if his production was satisfactory, which it was not, and that in that event Palmer would have waived consideration of other factors which, according to Palmer's testimony, justified Lugoff's dismissal along with five (5) employees mentioned above.

(3) That the Examiner did not see fit to set forth in his Intermediate Report important testimony given at the trial by Lugoff and necessary to indicate whether Lugoff testified accurately on matters important to him at the trial; that Lugoff testified: (P. 152 L. 11 to P. 153 L. 14)

"Q. State your conversation with Mr. Palmer.

A. Well, I came into Mr. Palmer's office and Mr. Young and Mr. Palmer were seated there. I told Mr. Palmer that I wanted to speak

to him about my discharge last Friday and he said for me to go right ahead and tell him all about it.

So I told him that I had been employed in classified for the past five years, that up to the time of the strike my production warranted my employment. I was bringing in enough business to more than pay for my employment, and during the strike the three months, May until August, that my production in advertising had dropped considerable. I told him that I was a member of the Guild before the strike and gave up my membership card at the time of the strike.

I told him that I took up with Tobin before going on my vacation two weeks previously about my low production, telling him about the contemplated loan and getting Tobin's O. K. that it was all right to go ahead. I told him that now that I had a \$300 debt on my shoulders and no job that I knew that Mr. Palmer himself was not legally responsible but the debt would nevertheless have to be paid and it would never have been incurred if Tobin hadn't told me that my job was O. K. And I left it at that. That is——

Q. What did he say?

A. He thought a minute and he said, 'Do you want us to pay that \$300 or do you want your job back?'

Q. What did you say?

A. I said naturally I had to work. Well, he said, 'Lugoff, you go downstairs and wait an hour and Mr. Young and I will talk it over.' "

(P. 154, L. 2-6)

"Then you went downstairs. What was the next thing that happened.

A. I waited a half an hour and Mr. Young came and handed me a slip of paper with the stipulations by which I was rehired back."

that the said slip of paper, Board's Exhibit 16, read as follows: (P. 156 L. 2-6)

"Q. (By Mr. Sokol) Now, referring to Board's 16, it is very brief, it says: 'You will be retained in your present position with final decision to be made on January 1, 1939. The intervening period will be probationary. T. H. Young, business manager, dated August 22, 1938.' "

that Lugoff made many references in his testimony to the fact that he had obtained from the Bank of America a Three Hundred (\$300.00) Dollar loan at this time, which he states was in reliance upon Mr. Tobin's statement that his job was safe and that some of the references made by Lugoff to this loan are as follows:

"I said Mr. Tobin . . . I have to send my wife back east . . . I need \$300 on this loan . . . (P. 234 L. 20); I made it through the Bank of

America . . . (P. 235 L. 11-12); I had got a \$300 loan on my shoulders . . . (P. 236 L. 9); I had that loan . . . the loan was spent . . . get that loan off my shoulders . . . on account of that loan . . . worried about that \$300 loan . . . (P. 237 L. 1-20)''

That on the bottom of Page 309, beginning Line 25, and at the top of Page 310, Line 9, Lugoff testified as follows:

“Q. This loan of \$300 that you said you had obtained was that a loan on your car?

A. I think it was, yes.

Q. Your car had been clear prior to that time that you made that loan?

A. That is right.

Q. It was in August, 1938? A. Yes.

Q. You made the loan from the Bank of America? A. That is right.”

that this and other testimony indicates that at this point in the testimony Lugoff stated unmistakably that he had obtained the Three Hundred (\$300.00) Dollar loan from the Bank of America on his car in reliance upon Mr. Tobin's statement, and that other references to the loan are found as follows:

“I have got a \$300 loan . . . (P. 241 L. 17); This loan . . . (L. 18); That loan . . . (L. 21); Pay it back . . . (L. 22); I have had it . . . (L. 23); The loan . . . (L. 25); The loan . . . (P. 242 L. 6); The loan . . . (L. 15); That \$300

debt . . . the \$300 loan . . . the \$300 was paramount. (P. 320, L. 3-6); That \$300. (P. 322, L. 18); The \$300 . . . (P. 323, Line 9)''

that the Examiner in his Report failed to state that after these many expressions in Lugoff's testimony that he had incurred this indebtedness at this time, Respondent called as a witness an employee of the Bank of America, who produced the Bank's records from which it was stipulated (P. 710, L. 3-8) that on July 27th, 1938, Lugoff made a loan from the Bank in the total sum of One Hundred Sixty-five (\$165.00) Dollars, and that in addition there was outstanding Thirty-two Dollars and Fifty Cents (\$32.50) from a previous loan of Forty-five (\$45.00) Dollars, made June 18th, 1938; That the witness from the Bank testified (P. 713 L. 1-4) that the balance of Thirty-two Dollars and Fifty Cents (\$32.50) on the earlier loan was paid by Lugoff on August 19th, 1938; that it thus appeared that when Lugoff came to the office of Palmer on August 22nd, 1938, and specifically mentioned a Bank loan of Three Hundred (\$300.00) Dollars that the loan was actually One Hundred Sixty-five (\$165.00) Dollars and not Three Hundred (\$300.00) Dollars, which Respondent believes has an unmistakable bearing upon Lugoff's credibility and the testimony given by him in this case; that later Lugoff was recalled to the stand by counsel for the Board and that the following testimony appears in the record: (P. 767, L. 16 to Page 768, L. 12 to P. 770, L. 17 to P. 771, L. 17)

“Q. (By Mr. Sokol) Mr. Lugoff did you . . . have to borrow \$300 prior to your discharge in August, 1938?

A. Yes sir, I did . . . we went outside, from the family and got the rest. I might add at this time that it was a sick sister in New York that had suddenly developed cancer and it was partly the family affair as far as——

* * * * *

Q. Did you tell the company you borrowed \$300 from the bank?

A. I didn't mean to give that interpretation. I meant I incurred an indebtedness of \$300.

* * * * *

Q. (By Mr. Palmer) From whom did you borrow the difference between \$165 and the \$300, Mr. Lugoff?

A. From my brother-in-law.

Q. Did you get that by check?

A. I don't know. I don't believe so. My wife got it.

* * * * *

Q. Is he her brother?

A. He is her brother.”

That although the Examiner stated in his report that he was not resolving the conflict of Lugoff's testimony with that of Palmer, he in fact did resolve it in favor of Lugoff and did so in spite of the fact that he had before him the false statement of Lugoff with regard to the Three Hundred (\$300.00) Dollar

loan; that Palmer's version of the conversation with Lugoff appeared on P. 78, L. 7-13 and P. 79, L. 14 to P. 80, L. 24 of the Transcript, as follows:

"Q. (By Mr. Sokol) What did he (Lugoff) say?

A. (By Palmer) Well, that the strikers had been returned to their jobs, that five people we had discharged for economy were being reinstated until the end of the National Labor Relations Board case and that he, Lugoff, had not gone out on strike and he did not believe that he should receive any less treatment than those who had been on strike.

* * * * *

Q. Now, you have discussed it with either Mr. Tobin or Mr. Young?

A. Perhaps both, I don't know.

Q. What did you discuss with them?

A. Mr. Lugoff's appeal.

Q. What did you say about it?

A. I said that I thought it was—that there was a great deal of merit in his appeal.

Q. All right.

A. And that since we were under obligation, by virtue of our agreement we were taking other people pending decision, we saw no reason why Mr. Lugoff shouldn't be given equal consideration.

Q. Did you see Mr. Lugoff after that?

A. Well——

Q. At that time did you reinstate him personally? A. No, I don't think I did.

Q. Who reinstated him?

A. Well, I can't say whether Mr. Tobin did or Mr. Young.

Q. Did you tell Mr. Young what to say to him? A. No.

Q. You didn't? A. No.

Q. What did you tell Mr. Young to tell Mr. Lugoff, that he was reinstated under the precise conditions that these five people were reinstated pursuant to that strike settlement agreement?

A. No, I don't recall telling Mr. Young to tell him that precisely. That was the basis of Mr. Lugoff's appeal.

Q. Did you tell Mr. Young when Mr. Lugoff's employment was determined?

A. No, no.

Q. Did you ever tell Mr. Lugoff that he would be reinstated under the precise conditions that the five employees named in the strike settlement agreement were reinstated?

A. No, I personally didn't tell him that."

that with reference to the discharge of Lugoff on March 30th, 1940, Palmer's testimony, also in response to questions by the Board's Attorney Mr. Sokol, beginning at the bottom of Page 80, Line 25, and continuing on Page 81 and 82 to Line 8 of the transcript, was as follows:

"Q. Did you determine to—when did you discharge Mr. Lugoff after that?

A. I say I am not sure. I personally didn't discharge him.

Q. The last time?

A. Oh, the last time. His notice went out the same time as Mr. Schlichter's, I am sure.

Q. Why?

A. Why?

Q. Yes.

A. Because he had been reinstated because these other people were being reinstated. They now were being let out and Mr. Lugoff was in the same position as to unsatisfactory production as he was and he should also be let out, for that reason he was let go. Our obligations to Mr. Lugoff, to be fair with him on the basis of dealing with the others, had ceased. The others were being let off.

Q. What obligation did you have to him?

A. Only the obligation that was represented by his appeal, that since those who had been on strike were being taken back he, Mr. Lugoff, should be reinstated.

Q. You were forced by a strike settlement agreement to take these five employees back?

A. Yes, that is right.

Q. You didn't want to take them back?

A. No, that is right.

Q. Now, why did you take Mr. Lugoff back in August, 1938?

A. Because if we could take back the others under force there was no reason why we shouldn't take Mr. Lugoff back under a gentlemanly appeal.

Q. Now, under the same reasoning, why didn't you extend your leniency to that particular date in March, 1940, when you discharged him?

A. The reason then has ceased to exist."

and attention should also be called to Palmer's testimony during the latter part of the case (P. 749, L. 16-19 and P. 750, L. 13-16), this time in answer to questions by Mr. Sargent, Attorney for the Respondent.

(4) That when the Examiner placed considerable emphasis in his Report upon the fact that when Lugoff was reinstated following his discharge by Mr. Tobin in August, 1938, and was advised by Mr. Young, in writing, that he was on probation until January 31st, 1939, the Examiner ignored completely the provision in the Strike Settlement Agreement that there were to be no economy discharges prior to January 1st, 1939, and the testimony of Roger Johnson (Pgs. 508-511) that a committee came to Palmer prior to January 1st, 1939, to protest against any dismissals for economy reasons upon or after January 1st, 1939, and that no such dismissals were made.

(5) That the Examiner in his Finding "There is no evidence that either Young, who had formerly placed Lugoff upon probation, or Tobin, the employe's immediate superior, then or thereafter warned him that unless his production increased he would be discharged.", ignored the testimony of

Mr. Young (P. 704, L. 7 to P. 705, L. 5) as to his conversation with Lugoff prior to July 1st, 1939, at which time a minimum guarantee of Twenty-four Dollars (\$24.00) a week was given to Lugoff and others, and at which time Mr. Young told Lugoff "that people working under that guarantee would be expected to hold to earnings in line with them"; that at the time of the August 1st, 1938, discharge of Lugoff by Tobin for low production, when Lugoff was not a member of the Guild, and when Palmer had reinstated Lugoff over the heads of Tobin and Young, the only course of action remaining to Tobin and Young was to seek to raise his production until such time as Palmer was willing to agree to his dismissal.

(6) That the Examiner overlooked complete the possibility, and in this case it is believed by Respondent the probability, that an employee, knowing full well that his production did not justify his continued employment, sought to make a pretense of union activity in the belief that the National Labor Relations Board would protect him in his job, regardless of whether his production was satisfactory or regardless of whether he properly applied himself to his work.

(7) That the Examiner's statement that "In May (1939) he (Lugoff) openly circulated a petition authorizing the Guild to represent this group of employees." does not jibe with Lugoff's testimony, as revised by him on cross-examination, that he secretly and not openly circulated said petition, that

he refrained from approaching five (5) of the twelve (12) members of the Classified Advertising Department, that he approached only six (6) others and himself, and that from the six (6) he obtained only three (3) signatures, one of which was that of Helen Brichoux, another member of the Guild (P. 221, L. 1 to P. 230, L. 24, inclusive, and P. 300, L. 1 to P. 303, L. 7).

(8) The Examiner's statement of opinion that the Management knew of these activities of Lugoff at about the time they took place, and that the Management waited until nearly a year later to discharge Lugoff and then did so for union activity hardly seems consistent for the reason that if the Management had determined to discharge Lugoff for union activities it would certainly not have waited until nearly a year later to do so.

(9) That the Examiner in his report seemed to imply by his Finding "Lugoff's testimony is uncontradicted that, in urging their point, both he and his companion argued that dissatisfaction with wages led to the growth of unions and guilds. Young granted their request", that there was something wrong or reprehensible on the part of the Management or Mr. Young in *exceeding* to Lugoff's request for the establishment of a guaranteed weekly wage, whereas, on the contrary, Palmer believes that this was an indication that not only was Lugoff not discriminated against, but that when he made a suggestion which contained merit it was adopted.

(10) That the Examiner points out that Lugoff attended meetings held by the Guild and the Management, but neglects to refer to Lugoff's testimony (P. 292 L. 20 to P. 295, L. 21) that many others also attended such meetings and that none of them were discharged.

(11) That the Examiner, in referring to a conversation between Lugoff and another employee named Gilman, stated: "Although the record does not establish that he possessed supervisory powers over employees, the character of his duties plainly placed him in management's confidence, and in a position to accurately reflect management's disapproval of Lugoff's union activity.", and that this statement was made in spite of the fact that the record contains no evidence to show that the duties of Gilman placed him in the Management's confidence or that he in any regard did reflect the Management's opinions; that Lugoff testified (P. 289, L. 25 to P. 290, L. 15 and P. 307, L. 22 to P. 308, L. 17) that Mr. Smith was Credit Manager, that Mr. McCormick was under him and that Gilman was Display Credit Manager under Smith and that Mr. Smith passed on doubtful credits so that we have here a Department head with three (3) men working under him (George Palmer being the third) and the Examiner, without the slightest supporting evidence, permits his imagination to lead him to the conclusion that one of the lowest ranking persons in the Department is in the Management's confidence and in a position to reflect the Management's opinions,

which would mean that every employee in the plant would be in exactly the same position.

(12) That in the same connection, the Examiner refers to George Palmer (not the son of Palmer, the Publisher) stating that George Palmer told Lugoff "the management was going to close down the plant if the Guild in its negotiations for a new contract didn't act reasonable.", whereas the Management had no intention of shutting down the plant and immediately proceeded to execute a new contract with the Guild, indicating how little George Palmer knew about the Management's intentions or views.

(13) The Examiner states that in March, 1940, Lugoff circulated another petition, whereas Lugoff testified (P. 299, L. 7 to P. 300, L. 3) that he didn't any more than get started with this petition; that the Examiner did not mention the contents of the petition, which contain the following statement:

"... Believing, as the management has stated from time to time, that all workers of all departments in the Citizen-News are entitled to the Rights and Privileges obtained by the editorial department in its contract with the management, and, taking the management at its word when it further states that they the Citizen-News, although believing that all the workers of all departments are entitled to those Rights and Privileges, will not bind themselves in any way to recognize such Rights and Privileges until such departments do obtain a major-

ity of workers in their respective departments and do then petition a bargaining agent under the National Labor Relations Act."

that this statement drawn by Guild members certainly refutes the contention of the Examiner that prior to the time (March, 1940) Respondent had been interfering with, restraining or coercing its employees in the exercise of their rights of union activity.

(14) That the Examiner makes certain findings with reference to Lugoff's low production, but ignores completely the contradictory testimony of Lugoff on direct examination by the Board's Attorney that his earnings had increased steadily from December, 1939, up until the time of his discharge on March 30th, 1940 (P. 170, L. 1-4 and P. 263, L. 8-13); that to show the untruthfulness of Lugoff's testimony the Respondent offered in evidence (P. 602, L. 5 to P. 604, L. 10) compilations made from the original records of the paper and which records had been subpoenaed by the Board; that these records show that for the six (6) months prior to January 1st, 1940, Lugoff's average weekly earnings were Twenty-one Dollars and Forty-one Cents (\$21.41), but that during all of this time he was paid a minimum of Twenty-four (\$24.00) Dollars, and that his average lineage during that period of time was six hundred forty-six (646) lines, while for the thirteen (13) weeks between January 1st, 1940, and the time of his discharge in March of that

year, Lugoff's average weekly earnings were only Nineteen Dollars and Seventy-two Cents (\$19.72) and his average weekly lineage only five hundred sixty-seven (567) lines; and that Respondent is at a loss to understand how the Examiner could have completely ignored such statements on the part of Lugoff in determining the credibility to be given to his testimony.

(15) That the Examiner ignores completely testimony to the effect that a messenger boy, Wally Sellers, who replaced Lugoff and had had little or no experience in this type of work, averaged weekly earnings of Twenty-one Dollars and Fifty-eight (\$21.58) for his first seven (7) months, which was considerably more than Lugoff, with his wide opportunity for experience, had earned for some time prior thereto.

(16) That the Examiner ignores the testimony both of Palmer and of Young, the Publisher and Business Manager of Respondent, that they had seen Lugoff sleeping in his car during working hours, although said testimony was denied by Lugoff, and the undenied testimony of Tobin (P. 674, L. 14-17) that on a number of occasions he had seen Lugoff playing pin ball marble games during working hours, at one time for an hour and twenty minutes (P. 675, L. 4 to P. 676, L. 14), the testimony of Tobin (P. 583-591) that Lugoff repeatedly failed to make calls he was requested to make by Tobin,

and that Tobin frequently talked to Lugoff about his low production (P. 593, L. 9-16).

(17) That the Examiner states that "at the time of discharging Lugoff, Palmer did not have before him the comparative analysis" and thereupon draws the conclusion that Lugoff's discharge was for reasons of discrimination rather than because of unsatisfactory production, but in drawing this conclusion the Examiner ignores the fact that the Management was well aware of Lugoff's low and unsatisfactory production; that the comparative analysis was prepared only after Lugoff had falsely testified as to his earnings (P. 170, L. 3-4; the Examiner states in his report that "Palmer testified that following his receipt of notification of the Board's decision in Case C-947 he conferred with Young, was informed that Lugoff's production record had not improved, and that he therefore discharged him.", but because the detailed analysis of Lugoff's lineage records had not been made prior to the hearing, the Examiner draws the unjustified conclusion that at the time of the discharge low production had nothing to do with the discharge; nor did the Examiner point out or apparently consider that the records subpoenaed by the Board, without a detailed analysis, were such as to show that Lugoff's production record was low and had not improved and that if it lead to his indiscriminatory discharge in 1938, it certainly justified his discharge in 1940.

(18) That the Examiner states that he has examined records of other classified salesmen and has

satisfied himself that conflicting conclusions may be drawn as to the relative production of a single employee from month to month and from year to year, but he does not give the reasons for the bases for his conclusion and it is significant that the records show unmistakably that Lugoff's production was low and continued to be even lower up to the time of his discharge.

(19) That the Examiner by his statement that Lugoff's production record for the first five (5) weeks of January, 1939 was twenty-seven (27%) per cent. lower than for the first five (5) weeks of January, 1938, but he was not discharged, finds that his own comparison is a basis for drawing a conclusion but that the comparisons of Respondent, going over a longer period of time, are not sufficient from which to draw proper conclusions; and, furthermore, the fact that Lugoff was not discharged the moment the Management found that he was no longer producing sufficient to warrant his retention, should be a matter of gratification to the Examiner, rather than lead him to a conclusion that the Management should have fired Lugoff then and there for low production, and that Respondent, instead of being penalized, should be given credit for extending the time within which Lugoff might raise his production to a satisfactory level.

(20) That the Examiner, toward the end of his Findings with regard to Lugoff states: "In summary, the undersigned is convinced that the real

reason for Lugoff's discharge is to be found in the respondent's long-existent antipathy toward the Guild and in Palmer's resentment toward an employee who, reinstated upon the plea that he had left the Guild and had not taken part in the strike, thereafter became notably active in organizing employees in his department.''; that this statement of the Examiner is without foundation in the evidence and, on the contrary, appears to be a conclusion to which the Examiner wished to arrive, regardless of the evidence, because there was no evidence in the record of "respondent's long-existent antipathy toward the Guild", nor evidence of Palmer's resentment toward Lugoff, but rather the contrary, and no evidence that Lugoff became "notably" active in organizing employees in his department; that on the contrary the record does contain evidence, such as that in the petition Lugoff claims he circulated in March, 1940, just prior to his discharge, and referred to above, together with evidence contained in the notice by the Management to all employees, under date of April 1st, 1940, (P. 735 L. 7 to P. 736, L. 2), that the Management would continue to recognize the right of employees to join or not to join a union, that the Management would continue to recognize the right of employees to bargain collectively through their own representatives, and that no person had any authority to express for or on behalf of the Management any view contrary to such assurances; and that the Examiner also ignored, in arriving at his conclusion, the Manage-

ment's posted notice of November 3rd, 1939, to the effect that the Management would not indicate to its employees what course they should take in reference to joining unions.

(21) That while the Examiner had stated that he declined to resolve the conflict of evidence between Lugoff and Palmer as to Lugoff's reinstatement and attempted to belittle Palmer's statement, he nevertheless forgot himself and stated that Lugoff was reinstated, not because of "That \$300 loan", but upon the plea that he had not taken part in the strike.

(22) That the Examiner then finds to be without merit Palmer's contention that he delayed discharge of Lugoff until March 30th, 1940, when Schlichter and Yeaman were discharged, and ignores completely the fact that if Palmer's contention were true that he was trying to treat Lugoff the same as the employees who had gone off on strike, this was the time when Lugoff would have been let go along with Schlichter and Yeaman and that the fact that Lugoff was retained until this time, in spite of his low production, is substantial evidence of the truth of Palmer's statement as to the reason for Lugoff's reinstatement in August of 1938, and that it was not until the dismissals of Schlichter and Yeaman that Palmer felt he had, in leaning over backwards to be fair to Lugoff, given him in every regard the same consideration as those who had proved less loyal to Respondent; that the Examiner in his statement that he could not find Palmer's contention to

be meritorious unless he were prepared to ignore documentary evidence (1) that Lugoff was placed upon probation until January 31, 1939, and (2) Palmer's letter discharging Lugoff on the ground that his services were unsatisfactory, gives evidence of a desire on his part of an intent to adopt strained and unusual interpretations of both those documents and that he ignored the fact that the notice Mr. Young gave to Lugoff, following his reinstatement, to the effect that he was on probation until January 31st, 1939, merely conformed to the Strike Settlement Agreement that there would be no discharges for economy reasons prior to that date, and that Palmer's letter discharging Lugoff upon the ground that his services were unsatisfactory certainly conformed to the truth with regard to his decreased production, shown to have been known to the Management at this time even though the detailed analysis of his production was not produced until Lugoff's untrue statements made on the stand in the trial of the case; that the Examiner failed to consider that an employer is generally acting for the best interests of an employee whom he finds necessary to discharge by not furnishing a bill of particulars to him as to the various ways in which his services have been unsatisfactory and which letter would remain as a document against the record of an employee when the latter seeks further employment and, further, that the Management should be praised and not blamed for withholding discharge

of Lugoff during the many months when it was awaiting the long-delayed decision of the Board in Case C-947.

(23) That the Examiner in his findings makes no reference to and ignores the fact that at the time of Lugoff's discharge in March, 1940, he received the sum of Two Hundred (\$200.00) Dollars as accumulated severance pay (P. 243, L. 2 to P. 244, L. 20), and that prior to the trial Lugoff never did offer to return the same to the Management, nor did anyone else do so in his behalf; that when Lugoff accepted the Two Hundred (\$200.00) Dollars as severance pay, which was not payable to him except in the event of his discharge, Lugoff admitted, by such acceptance, the legality and justice of his discharge and if he had seen fit to question either the validity or the fairness of his discharge, that was the time for him to have done so and that by raising no question, either then or later, to the payment of the Two Hundred (\$200.00) Dollars to him there was, in effect, an acceptance by him of an offer by the Management to terminate its relation with him at the time by the payment of that sum of money; and that even after entering into such a quasi-contractual relationship with Respondent, if Lugoff had subsequently discovered that his acceptance of the sum of Two Hundred (\$200.00) Dollars had been brought about by mistake or other error on his part, it was incumbent upon him to offer to return the Two Hundred (\$200.00) Dollars, which he did not do.

(24) That the Examiner completely ignored the uncontroverted and undenied testimony on behalf of the Respondent (P. 598, L. 6 to P. 599, L. 19) that Lugoff had the best territory and the easiest territory within which to work of those engaged in similar work for Respondent for the reason that the territory was relatively compact, more immediately adjacent to the Respondent's plant and contained accounts which could be more readily and easily solicited for advertising in Respondent's columns, and with greater opportunity for success if properly handled and not in such direct competition with the large Los Angeles downtown papers, than other territories extending to appreciably greater distances from Respondent's plant and containing accounts in much greater competition with the large metropolitan newspapers of Los Angeles, and that the low and decreasing production of Leonard Lugoff resulted in spite of the favorable aspects of his territory as contrasted with those of other salesmen whose results were uniformly better and more productive than those of Lugoff.

(25) That the Examiner in reaching his conclusion, as set forth in his Report, that the Respondent by discharging Leonard Lugoff discriminated in regard to the hire and tenure of his employment, thereby discouraging membership in the Guild, and thereby interfered with, restrained and coerced its employees in the rights guaranteed in Section 7 of the Act, must necessarily be understood as having taken the position that an employer cannot discharge

an inefficient and relatively non-productive employee, who seeks to hide behind union membership and union activity as a cloak for such inefficiency and lack of satisfactory production.

(26) That in his various Findings of Fact and the conclusions which he has presumed to base thereon with regard to Leonard Lugoff, the Examiner may be fairly charged with having gone out of his way, after having determined to uphold the discharge of Karl Schlichter, to try to justify his contrary conclusions with regard to Leonard Lugoff; that he has, in doing so, based his Findings and Conclusions not upon the evidence, but on the contrary upon a desire on his part to reach findings and conclusions contrary to the evidence, and has exhibited an attitude of prejudice, bias and partisanship rather than an impartial, judicial attitude, and it is submitted that both his conclusions as well as his findings are false, untrue and erroneous as affecting Leonard Lugoff.

D. The Discharge of Karl Schlichter

The Respondent does not except to the ultimate conclusion of the Examiner in regard to Karl Schlichter except, first, to indicate that it does not agree with certain of the Findings and the doubt expressed by the Examiner, and, second, to point out that if the Examiner had used the same general reasoning with regard to Leonard Lugoff as adopted with regard to Karl Schlichter, the ultimate conclusion of the Examiner would have been the same with

regard to Leonard Lugoff as it was with regard to Karl Schlichter, as, for example, where the Examiner believes the statement of the Management that Schlichter would have been retained had his services been satisfactory and does not believe the same statement made by the Management with regard to Leonard Lugoff.

IV. The Effect of the Unfair Labor Practices upon Commerce

Respondent excepts to the Finding of the Examiner that the activities of the Respondent, either as set forth in Section III B and C of the Report, occurring in connection with the operations of the Respondent described in Section I of the Report, or otherwise, and denies that they have a close, intimate or substantial, or other relation to trade, traffic or commerce among the several states, or that they tend to lead to labor disputes burdening or obstructing commerce or the free flow of commerce, and, on the contrary, Respondent again affirms and alleges that its operations do not have a close, intimate or substantial relation to trade, traffic or commerce among the several states and do not tend to lead to labor disputes burdening or obstructing commerce among the several states or the free flow of commerce; that the Findings of Fact made by the Examiner failed to find the Respondent has its business exclusively in Hollywood, California, that the circulation of its paper does not extend generally over the City of Los Angeles, but is confined largely

to the neighborhood of Hollywood, Beverly Hills, Westwood, San Fernando Valley and the Wilshire District, all within Los Angeles County, California; that Respondent has a daily circulation of approximately twenty-six thousand (26,000); that there are only about one hundred twenty-five (125) copies mailed daily to points outside the State of California and that they are sent generally as a matter of accommodation; that Respondent performs no activities outside the State of California; that its printing work is all done within the State of California; that Respondent is a California corporation with a single place of business, operating exclusively within a very restricted neighborhood within the City of Los Angeles and its environs; that no one connected with the paper is engaged in any work outside the State of California, or in the receiving or transmission of any news or supplies from or to a source outside the State; that said newspaper of Respondent is wholly prepared, edited, printed and published within the State of California, where the Publisher's only office and place of business is located, and that Respondent's business is not interstate commerce within the meaning of the National Labor Relations Act, as set forth in *Western Live Stock v. Bureau of Revenue*, 82 L. Ed. 548 (1938).

V. The Remedy

Respondent excepts to each and every part of the Examiner's Report in this connection.

CONCLUSIONS OF LAW

1. No exception.
2. Respondent excepts to each and every part of the Examiner's Conclusion in this regard.
3. Respondent excepts to each and every part of the Examiner's Conclusion in this regard.
4. Respondent excepts to each and every part of the Examiner's Conclusion in this regard.
5. No exception.

RECOMMENDATIONS

1. Respondent excepts to the recommendations of the Examiner's Report for the reason that it cannot cease and desist from doing something which it has not been engaged in doing, both as to (a) and (b).

2. Respondent excepts to each of the recommendations in paragraphs (a), (b) and (c) upon the following grounds:

(a) That inasmuch as Respondent did not discriminate against Leonard Lugoff, and believes that the evidence in the case indicated that it did not, Respondent should not be called upon either to offer reinstatement or any loss of back pay.

(b) That inasmuch as Respondent has not engaged in the conduct alleged by the Examiner, and

believes that the record of the case so shows, it excepts to a recommendation that the Respondent cease and desist from engaging in any such conduct or that it take the affirmative action recommended by the Examiner.

(c) That inasmuch as the Respondent denies that it has done, or that the record shows that it has done, the things alleged by the Examiner, it excepts to the recommendation of the Examiner in this regard.

Respondent further excepts to the recommendations of the Examiner generally upon the ground that said Board has no jurisdiction, warrant or authority in the premises.

Dated: This 13th day of February, 1941.

THE CITIZEN-NEWS COMPANY

By HARLAN G. PALMER,

President.

WILLIS SARGENT,

Attorney.

United States of America
Before the National Labor Relations Board

Case No. C-1790

In the Matter of

THE CITIZEN-NEWS COMPANY

and

LOS ANGELES NEWSPAPER GUILD

Mr. David Sokol, for the Board. —

Mr. Willis Sargent, of Los Angeles, Calif., and Mr.
Harlan G. Palmer, of Hollywood, Calif., for the
respondent.

Miss Urcel Daniel and Mr. Charles J. Katz, of Los
Angeles, Calif., and Mr. Abraham J. Isserman,
of Newark, N. J., for the Guild.

Mr. William T. Little, of counsel to the Board.

DECISION AND ORDER

Statement of the Case

Upon charges and amended charges duly filed by Los Angeles Newspaper Guild, herein called the Guild, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twenty-first Region (Los Angeles, California), issued its complaint dated October 11, 1940, against The Citizen-News Company, Hollywood, California, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair

labor practices affecting commerce, within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and notice of hearing thereon were duly served upon the respondent and the Guild.

In substance the complaint alleged that the respondent (1) discharged and refused to reinstate Karl Schlichter and Leonard Lugoff because of their union membership and activity; and (2) interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act by (a) making known to them its disapproval of and hostility to the Guild and its opposition to their membership in or assistance to the Guild, (b) making speeches and distributing propaganda calculated to force its employees to withdraw from the Guild and to interfere with their free choice of collective bargaining representatives, (c) spreading rumors that its employees would lose their jobs by joining the Guild, (d) making derogatory statements in disparagement of the Guild, its leaders, and members, (e) disparaging the work of and imposing onerous conditions of work on Guild members solely because of their Guild membership or activity, (f) harassing Guild members solely because of their Guild membership by forcing them to assume menial and undignified tasks to and for which they were unaccustomed and untrained, and (g) refusing to adjust grievances with the Guild as a representative of its employees. In its answer

dated November 9, 1940, the respondent denied that it had engaged in or was engaging in the alleged unfair labor practices or that its activities affected commerce within the meaning of the Act.

Pursuant to notice duly served on the parties, a hearing was held at Los Angeles, California, on November 12, 13, 14, 15, 16, 18, and 19, 1940, before C. W. Whittemore, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and the Guild by an administrative officer. All parties participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

The Guild filed a brief with the Trial Examiner subsequent to the hearing. Thereafter the Trial Examiner filed his Intermediate Report, dated January 13, 1941, copies of which were duly served upon the parties. The Trial Examiner found therein that the respondent had engaged in and was engaging in unfair labor practices, within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act and recommended that the respondent cease and desist therefrom, reinstate Leonard Lugoff with back pay, and take certain other action designed to

effectuate the policies of the Act. He further found that the respondent had not discriminated against Karl Schlichter within the meaning of Section 8 (3) of the Act and recommended that the complaint be dismissed as to Schlichter. On February 17 and 27, 1941, the respondent and the Guild filed their respective exceptions to the Intermediate Report. Pursuant to notice duly served upon the respondent and the Guild, a hearing was held before the Board in Washington, D. C., on March 25, 1941, for the purpose of oral argument. The Guild was represented by counsel and participated in the oral argument. The respondent did not appear.

The Board has reviewed the exceptions of the respondent and the Guild to the Intermediate Report, and in so far as they are inconsistent with the findings, conclusions, and order set forth below, finds them to be without merit.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. The business of the respondent

The respondent is a California corporation, having its principal office and place of business in Hollywood, California. It owns and publishes the Hollywood Citizen-News, a daily newspaper, and the Hollywood Advertiser, a weekly free-circulation newspaper. The respondent also engages in commercial printing and operates a retail stationery store.

The respondent sells and distributes more than 26,000 copies of the daily Hollywood Citizen-News throughout the State of California. About .5 per cent of the total copies published are shipped daily outside the State of California to other States of the United States. Both the Associated Press and the United Press maintain teletype machines at the respondent's plant, and approximately 21 per cent of the reading matter in the Hollywood Citizen-News is comprised of news collected outside the State of California and transmitted by these news services through offices in California to the respondent. The Associated Press has the privilege of using items of news and intelligence collected and edited by the respondent's employees and transmitting such news and intelligence through its California office to points outside the State. The respondent also subscribes to numerous syndicated services which supply material originating outside the State of California amounting to approximately 17 per cent of the reading matter in the Hollywood Citizen-News. About 10 per cent of the total advertising revenue of the said newspaper and more than 5 per cent of the respondent's total revenue is derived from advertising originating outside the State of California and appearing in its columns.

In addition to large quantities of other raw materials which it causes to be transported to it from sources outside the State, the respondent uses about 350 tons of newsprint per month, all of which is shipped to it from points outside the State of Cali-

fornia. The purchase of newsprint constitutes 20 per cent of the total expenses of all the respondent's publications.

II. The organization involved

Los Angeles Newspaper Guild, Local 69 of the American Newspaper Guild, is a labor organization affiliated with the Congress of Industrial Organizations. The Guild admits to membership, among employees of the Hollywood Citizen-News, all employees in the editorial, display-advertising, classified-advertising, circulation, and business-administrative departments, with certain exceptions.¹

III. The unfair labor practices

A. Background

On June 27, 1938, in a prior proceeding instituted upon charges filed by the Guild, the Board issued a complaint alleging that the respondent had engaged in unfair labor practices within the meaning of Section 8 (1), (3), and (5) of the Act by discharging five employees, by refusing to bargain collectively with the Guild, and by in other ways interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act. At the time of the hearing in that case a strike was current at the respondent's plant. On

(1) A Guild representative testified that under the constitution employees whose "interests lie with the management as against those of the employees" are not eligible to membership.

July 30, 1938, subsequent to the hearing, the respondent and the Guild entered into a strike settlement agreement which provided for the "immediate restoration to the pay roll" of all the striking employees, including the five discharged employees, upon the following terms:

In the event it is finally determined that the five discharged employees, or any of them, were lawfully discharged, those so affected by such determination shall promptly resign or be subject to discharge.

"Final determination" was thus defined in the agreement:

. . . either the acceptance by both sides of the determination by National Labor Relations Board or the final determination thereof by any court or courts to which any of the parties to said proceedings may take such matter.

On March 26, 1940, the Board issued a Decision and Order² in the above-mentioned case, herein called the earlier case, in which it found that the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, but that it had not refused to bargain with the Guild and had not unlawfully discharged the five employees named in the

(2) Matter of The Citizen-News Company, a corporation and Los Angeles Newspaper Guild, 21 N. L. R. B., No. 110.

complaint. In order to remedy the effects of the respondent's interference, restraint, and coercion, the Board ordered the respondent to post notices stating that it would cease and desist from such conduct. The respondent has not complied with this order. Harlan G. Palmer, president of the respondent, stated at the hearing in the instant proceeding, "We have no intention to do so until the Court orders us to do so." Nor has the respondent complied with the Board's order in another case,³ decided September 1, 1938, in which the Board concluded that the respondent had engaged in unfair labor practices in violation of Section 8 (1) and (2) of the Act.

B. Interference, restraint, and coercion

The complaint alleged that the respondent imposed onerous working conditions on and assigned menial tasks to Guild members because of their Guild membership. These charges relate primarily to the assignments given Roger Johnson, Mellier Scott, and Karl Schlichter⁴ following their reinstatement in August 1938. Johnson, Scott, Schlichter, and two other employees were discharged in May 1938.⁵ In August 1938, they were reinstated

(3) Matter of Citizen-News Company, a corporation, and Los Angeles Typographical Union, Local No. 174, 8 N. L. R. B. 997.

(4) The facts concerning the alleged discrimination against Schlichter are set forth in greater detail in Section III D., *infra*.

(5) The discharge of these five employees was alleged to have been discriminatory in the earlier case.

pending the Board's decision. The Board has since dismissed charges that they were discriminatorily discharged and found that their discharge resulted from economy measures which required to some extent the reorganization of the respondent's departments.⁶ Thus, under the strike settlement agreement, the respondent had reinstated five employees whose services it did not require. Reinstatement of these employees resulted in confusion, transfers, and assignments to reportorial work not previously performed by them. No editorial salary was reduced. Roger Johnson, one of the five employees reinstated, testified that when the Guild protested these departmental changes, the grievance committee was told by Palmer that the respondent was "trying their best to fit the returned people into positions which in reality didn't exist and that because they had been required to take these people back it would naturally create some disturbance." It is clear that an unusual situation existed. Accordingly, we find, as did the Trial Examiner, that the record contains insufficient evidence to support a finding that any assignment or transfer of these three employees was motivated by their membership in or activities in behalf of the Guild or was made for the purpose of discouraging membership in the Guild.

Immediately after the editorial employees returned to work, however, they were deprived of their bylines because in the words of Swisher, the

(6) See footnote 2, *supra*.

X city editor, "the ill will created during the strike made it difficult for readers, particularly advertisers, to see the names of various former strikers without becoming alarmed at the name, recalling old feelings from the strike."⁷ We find that the strikers were deprived of their bylines because of their participation in the strike.

X Some time after the strike, according to the uncontradicted testimony of Patricia Killoran, when she sought to explain her failure to cover an assignment, T. Harwood Young, the respondent's business manager, inquired "How could I believe anything after all the things that you have done?" When asked to whom he referred, Young replied, "all of you." Killoran thereupon accused him of referring to the Guild and Young replied, "Well, as a matter of fact, I can't talk about those things because I am not allowed to," and after Killoran replied "Well, I can talk about them," Young added that "his brother had been a very active union man, that he knew more about unions than I would ever know, and he knew about good unions, like the Brotherhood, but that I was just not to be trusted, after the things that we had done."⁸

(7) The record discloses the name of only one advertiser who voiced such objection, which was directed against one employee.

(8) The respondent contends that Killoran's reply to Young's assertion that he could not discuss Guild matters relieves it of responsibility for his action. However, Young's statement that he could

Killoran also testified that at a time when she was posting a notice on the Guild bulletin board, she was told by Swisher that "the Guild was not a reputable organization," and that soon after her participation in the strike, Herbert Sternberg, classified-advertising manager, told her, in substance, "what a fool I was, and what a monkey I made of myself, and how terrible the C. I. O. was and the Guild was and the strikers were." Killoran's testimony as to the remarks of Young, Swisher, and Sternberg was uncontradicted and we find it to be true, as did the Trial Examiner.

We find that by the statements of Young, Swisher, and Sternberg, and by its action in depriving the strikers of their bylines, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

C. The discharge of Lugoff

Leonard Lugoff was first employed in November 1931 on the Hollywood Citizen-News, and left in September 1932. Prior to that employment he had worked for both the Hollywood News and the Hollywood Citizen, the papers which merged to form the present Hollywood Citizen-News. After leaving the Hollywood Citizen-News, Lugoff worked for several

not discuss Guild matters came only after he had clearly stated that he could not trust the Guild members because of their past activities and in the light of the preceding conversation, served only to remove any doubt Killoran might possibly have entertained as to the import of his prior statement.

other newspapers. In January 1934, Lugoff was re-employed by the respondent as a circulation solicitor. In August 1934, he was transferred to the position of classified-advertising solicitor, a position he retained until the time of his discharge in March 1940.

Lugoff joined the Guild in October 1937. He did not take part in the strike of 1938 and was expelled from the Guild for that reason. On August 19, 1938, Lugoff was discharged by Tobin, classified-advertising manager, because of "low production" or inadequate sales.⁹

On August 22, 3 days later, Lugoff protested his discharge to Palmer who reinstated him and placed him on probation until January 1, 1939. Lugoff was not discharged in January 1939, nor was he informed that his probation was continued.

In February 1939, Lugoff rejoined the Guild. At that time there was but one other Guild member in his department, Helen Brichoux, who had taken part in the strike. Lugoff became active in attempting to organize the employees in the classified advertising section. In May he openly circulated a petition authorizing the Guild to represent this group

(9) Lugoff claimed that Tobin told him that he was discharged because "they had to cut expenses." Tobin claimed that Lugoff was discharged "because his production had been so low." Since Lugoff's subsequent reinstatement was "probationary," we find, as did the Trial Examiner, that Lugoff's discharge was motivated by "low production" or inefficiency.

of employees. From the testimony of Tobin, who admitted having heard "rumors" of Lugoff's petition, we are convinced and find, as did the Trial Examiner, that by May 1939, the respondent was aware of Lugoff's union activity. In June 1939, accompanied by another salesman, Lugoff asked Young, the respondent's business manager, for the establishment of guaranteed weekly wages. Lugoff's testimony is uncontradicted that, in urging their point, both he and his companion argued that dissatisfaction with wages led to the growth of unions and guilds. Young granted their request. On July 19, and frequently thereafter, Lugoff participated in conferences with management as a Guild committee member. At about the same time (in August) Lugoff engaged in an argument with another employee whom he accused of spreading a rumor that "the management was going to close down the plant if the Guild in its negotiations for a new contract didn't act reasonable." During this argument George Palmer, son of one of the respondent's owners, interposed and declared, according to Lugoff's testimony, that he "knew that (the rumor) was a fact and he was willing to gamble on it." We credit Lugoff's testimony, as did the Trial Examiner. In March 1940, Lugoff circulated another petition among employees in his department. At the time of his discharge Lugoff was the only Guild member among the outside salesmen.

On March 26, 1940, the Board issued its decision in the earlier case, in which it found that the re-

spondent had not discriminated against the employees involved therein. On March 30, Palmer discharged Schlichter and Yeaman, the only employees reinstated under the strike settlement agreement who remained in the respondent's employ. At the same time, he sent Lugoff the following letter of dismissal:

March 30, 1940

Dear Mr. Lugoff:

This notice is to terminate your services with us effective this day. Your production does not justify your employment.

X
In its answer the respondent asserts that Lugoff was discharged because (1) he was reinstated in 1938 "on the same ground as the other employees who were reinstated pursuant to the Strike Settlement Agreement" and that after the Board decision in the earlier case, Lugoff was discharged "pursuant to the agreement under which he had been reinstated"; and (2) "his services continued to be unsatisfactory . . . during the period of his reinstatement."

X
In support of the respondent's contention that Lugoff was discharged "pursuant to the agreement under which he had been reinstated," Palmer testified that when Lugoff protested his discharge in August 1938, he complained that "the strikers had been returned to their jobs, that five people we had discharged for economy were being reinstated until the end of the National Labor Relations Board case

and that he, Lugoff, had not gone on strike and he did not believe that he should receive any less treatment than those who had been on strike." Palmer further testified that "since . . . by virtue of our agreement we were taking other people pending decision, we saw no reason why Mr. Lugoff shouldn't be given equal consideration," and Lugoff was accordingly reinstated. After the Board decision and the discharge of Schlichter and Yeaman, Lugoff was discharged, Palmer stated, "because he had been reinstated because these other people were being reinstated. They were now being let out and Mr. Lugoff was in the same position as to unsatisfactory production as he was and he should also be let out, for that reason he was let go. Our obligation to Mr. Lugoff, to be fair with him on the basis of dealing with the others, had ceased. The others were let off."

Lugoff denied that he had urged his reinstatement on the ground that the respondent had reinstated the strikers and the employees whose discharge had precipitated the strike. Instead, he asserted that 3 weeks before his discharge he had told Tobin that he was contemplating making a loan and inquired if his job was secure. Tobin, Lugoff averred, assured him that it was and he proceeded to make the loan. When he was discharged less than a month later, Lugoff testified, he protested to both Tobin and Palmer against the unfairness of the discharge after he had been induced to go into debt on the respondent's assurance that his job was secure. It was on

the basis of this protest, according to Lugoff, that Palmer ordered his reinstatement.¹⁰

The terms of Lugoff's reinstatement are clearly set forth in the letter notifying him of his reinstatement which provided:

August 22, 1938

To: Mr. Lugoff:

You will be retained in your present position, with final decision to be made on January 1, 1939. The intervening period will be probationary.

T. H. YOUNG,¹¹

Business Manager.

The respondent made no effort to explain why terms of reinstatement opposed to those upon which it

(10) The surrounding circumstances support Lugoff's version of the conference with Palmer. Thus Tobin admitted that shortly before his discharge, Lugoff asked for assurance that his job was secure, stating "that he owed some money or was going to incur a debt." Although Tobin denied giving Lugoff any assurance, it is significant that Lugoff proceeded to make the loan. Furthermore, Lugoff claimed that when he was discharged, he protested to Tobin on the same ground on which he claims that he appealed to Palmer. Supporting this claim is Tobin's twice repeated admission that Lugoff mentioned his indebtedness at the time of his discharge. Although Tobin retracted that admission, we do not credit the retraction. The fact that Lugoff protested his discharge to Tobin on the ground that Tobin was violating his promise lends credence to Lugoff's claim that he protested to Palmer on the same ground.

(11) Young was present during the conference between Palmer and Lugoff, and conferred with Palmer on the advisability of reinstating Lugoff.

asserts Lugoff was reinstated should be set forth in the letter.

In view of all the facts, we find that Lugoff's reinstatement in 1938 was not conditioned on, or connected with, the reinstatement of the other employees or the Board decision in the earlier case, but instead was conditioned solely upon his satisfactory work during the probationary period established by the letter of August 22, 1938. The respondent's claim that Lugoff was discharged "pursuant to the agreement under which he was reinstated" must be rejected.

In explaining the respondent's claim that Lugoff was discharged because his "services continued to be unsatisfactory . . . during the period of his reinstatement," Palmer testified that if his work had been satisfactory, the respondent would have retained Lugoff regardless of the alleged agreement under which he was reinstated. Accordingly, Palmer stated, he ordered Young to investigate Lugoff's work after the Board issued its decision in the earlier case, and upon receiving an unfavorable report, discharged Lugoff.

The respondent's claim that Lugoff's services were unsatisfactory, like its alternative assertion that Lugoff was discharged "pursuant to the agreement under which he was reinstated," is not supported by the record.¹² Lugoff was reinstated in

(12) The respondent to support its claim that Lugoff was inefficient asserted that Lugoff was once discharged by the Hollywood Citizen. There is no

August 1938 on probation. At the conclusion of his probationary period, the respondent did not discharge him or inform him that he was continued on probation. Furthermore, although in the normal course of business it was the duty of Tobin and Young to recommend discharges to Palmer and after obtaining his approval make discharges, such practice was not followed with respect to Lugoff. According to Palmer's own testimony, Lugoff's discharge was occasioned by Palmer's departing from his own customary business practice of leaving personnel matters to subordinates and personally ordering an investigation of Lugoff's work and personally discharging him on the basis thereof. Moreover, at no time during the 19 months following Lugoff's reinstatement did Tobin and Young recommend Lugoff's discharge, although it was their duty to do so if his work was unsatisfactory. Nor was Palmer able to cite a single complaint he had received concerning Lugoff's work during the period of his reinstatement. That Tobin and Young were fully cognizant of the nature of Lugoff's work appears from their own testimony that they studied his record on

evidence that such discharge, which occurred in September 1930, was for inefficiency. Furthermore, the respondent twice hired Lugoff thereafter, including the one occasion when the Hollywood Citizen and the Hollywood News merged and Lugoff, who had been working for the Hollywood News, was employed by the Hollywood Citizen-News despite Palmer's admission that very few of the Hollywood News employees were retained at that time.

three or four occasions during the period of his reinstatement.¹³ Nor could they have thought that their power to recommend Lugoff's discharge was abrogated by Palmer's reinstatement of Lugoff in 1938. Lugoff's reinstatement was expressly made "probationary." Furthermore as noted above, Tobin and Young testified that they held several conferences about Lugoff's work during the period of his reinstatement.

In support of its claim that Lugoff was inefficient, the respondent relies primarily on Lugoff's alleged inadequate sales production. However, only one of the respondent's four salesmen sold more advertising than Lugoff. The respondent claims, nevertheless, that the records of the salesmen are not comparable because the territories they serve furnish different problems and for this reason salesmen in the different territories are paid at different rates. The respondent urges that Lugoff's record shows a more pronounced decrease from its 1937 level than that of the other salesmen. Lugoff testified that the decrease in his production was due primarily to the loss of three accounts, two of which subsequently moved out of his territory. Lugoff's production records, which showed that in April and May of 1938 his sales declined precipitately, support his assertion as well as the respondent's contention of his inefficiency. It is thus apparent that the production records, which admittedly were prepared after Lu-

(13) In January, April, and August 1939 and possibly January 1940.

goff's discharge, are not conclusive. More significant, in our judgment, is the fact that although Tobin and Young were fully aware of the nature of Lugoff's work for a period of 19 months, they did not see fit to recommend his discharge.¹⁴

As further evidence of Lugoff's inefficiency, the respondent points to the fact that Sellers, an inexperienced salesman, who succeeded Lugoff, sold as much advertising as Lugoff.¹⁵ Tobin, himself, depre-

(14) In its exceptions the respondent urges that under an agreement with the Guild, it refrained from making "economy discharges" during the 19 months Lugoff was retained after his original discharge. The term "discharge . . . for economy reasons" is found in the strike settlement agreement and the contract entered into at the time of the strike settlement agreement. The term obviously refers to a dismissal for economy, such as the discharges involved in the earlier case, and does not refer to discharges for inefficiency. Furthermore, it is clear from the record that other employees, both Guild members and non-members, were discharged during the 19 months the respondent retained Lugoff. The agreement to refrain from "economy discharges" accordingly fails to explain the respondent's action in retaining Lugoff for 19 months if he was inefficient.

(15) During his employment prior to the hearing Sellers' average sale of advertising amounted to 620 lines per week, exactly the amount sold by Lugoff during the last 9 months of his employment and slightly less than the amount sold by Lugoff during the corresponding period of the preceding year. Although Sellers' average constitutes an increase over the average maintained by Lugoff during the first 3 months of 1940, two of the respondent's three other outside salesmen showed greater increases in their territories than Sellers showed in Lugoff's during the same period.

cated the need for experience in selling advertising, stating that it "required 90 per cent work and 10 per cent ability." Furthermore, it is to be noted that when Sellers approximated Lugoff's production record, he was given a raise in salary to that previously paid Lugoff, which the respondent claims Lugoff did not earn.

The respondent also asserts that Lugoff was discharged because his commissions failed to cover his guaranteed weekly minimum salary. It is clear from the record, however, that other employees frequently failed to earn their guaranteed salaries. Indeed the salary of Sellers, Lugoff's successor, was raised to \$24 per week, although his commissions amounted to that sum on only three occasions.¹⁶

In addition the respondent asserts that Lugoff slept during working hours, failed to call upon prospective clients when requested to, and played pin ball games during working hours. The evidence introduced plainly discloses that the events in question occurred some time before Lugoff's discharge and were either known to Tobin and Young at the time

(16) In its exceptions the respondent points out that Young testified that he had warned Lugoff that he would have to maintain earnings commensurate with his guaranteed salary. Lugoff denied this. Since the respondent did not require its other employees to earn the guaranteed salary, and since the notice that the respondent posted announcing the terms and conditions of the respondent's guaranteed salary policy made no mention of the necessity of earning the guaranteed salary, we credit Lugoff's denial.

they considered his record and decided that it did not merit discharge, or were not known to them until after Lugoff's discharge in March 1940.

As noted above, in ordering Young to investigate Lugoff's work and in personally discharging Lugoff in 1940, Palmer departed from his long-standing business practice of delegating to subordinates personnel problems involving the discharge of employees. Palmer explained his failure to follow his normal business practice on the ground that he "had been . . . carrying the brunt of the National Labor Relations Board activities . . . and I was the logical one to give the decision . . . when the Board handed down its decision." Palmer's explanation would be applicable had Lugoff been reinstated on the same terms as the employees reinstated under the strike settlement agreement and thereby been impliedly protected against discharge during the pendency of the Board's decision. However, the letter of August 22, 1938, clearly shows, and we have found, that such was not the case. Lugoff was most active in organizing the respondent's unorganized employees and at the very time of his discharge was engaged in circulating a petition to that end. We have found above that the respondent had clearly revealed its hostility toward the Guild. Under such circumstances, Palmer's participation in the field of personnel problems and his selection for discharge of Lugoff, the employee most active in organizing the respondent's unorganized employees, takes on added significance. Under the circumstances we are impelled to the con-

clusion, as was the Trial Examiner, that Lugoff was discharged not because of the reasons advanced by the respondent but because of his activities in behalf of the Guild.

We find that the respondent, by discharging Leonard Lugoff on March 30, 1940, discriminated in regard to his hire and tenure of employment, thereby discouraging membership in the Guild and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

D. The discharge of Karl Schlichter

Pursuant to the strike settlement agreement referred to in Section III A, above, the five discharged employees were restored to the respondent's pay roll. Prior to March 30, 1940, three of these five employees voluntarily left the respondent's employ and on that day Elizabeth Yeaman and Karl Schlichter were notified by letter that their employment was terminated. Yeaman's discharge is not in issue.

Notification to Schlichter read as follows:

This notice is to terminate your services with us effective this day. We consider you incapable of the type of production we desire from a man in your post.

The complaint in the instant case alleges that Schlichter was discharged on March 30, 1940, because of his union activities. The respondent denies this allegation but alleges that Schlichter was dis-

charged (1) in accordance with the agreement of July 30, 1938, and (2) because his services continued to be unsatisfactory to the respondent during the period of his reinstatement.

Palmer testified that he received notification of the Board decision, above referred to, on March 28, and that when no resignation from Schlichter had been received by March 30, he was discharged. Palmer further testified:

. . . my interpretation of the Board's decision was that the Board dismissed the action so far as the question of the regularity of the discharge of these five people was concerned. That was the order, as I read the order, dismissing that action. Therefore, there was no action pending, the Board had held it was legal and dismissed the action, and the day the Board signed the order there was no action then, nothing in existence charging us with the unlawful discharge of the five employees.

Palmer admitted that he did not communicate with the Guild prior to the actual discharge of Schlichter or attempt to find out if the Guild would accept the Board's Decision and Order. At the hearing and in its brief, the Guild contended, in effect, that the respondent acted in bad faith by taking summary action with respect to Schlichter before the Board decision had been accepted by the Guild. We do not consider that the dispute as to whether the respondent's discharge of Schlichter was consistent with or in violation of the terms of the strike settlement

is an issue for our determination. Since we found that the discharge in 1938 was not in violation of the Act, it is clear that the respondent was under no obligation to reinstate Schlichter thereafter.

It is plain, however, from the answer to the Complaint and the testimony of Palmer, that the respondent's position with respect to Schlichter's discharge does not rest solely upon its contention that the Board decision absolved it from obligations incurred under the agreement. Palmer testified:

. . . if Schlichter's services were satisfactory
. . . he would have been kept.

Within a few days after discharging Schlichter, the respondent informed the Guild not only that he had been dismissed under terms of the agreement but that "his services were not satisfactory."

In the earlier case the Board found that "There is no evidence that Schlichter was a particularly active member of the Guild." In 1938, however, following his reemployment, he became treasurer and in 1939, chairman of the Citizen-News unit of the Guild. He participated in a number of grievance meetings with the management.

Upon his return to the respondent's pay roll, Schlichter did not resume his previous duties as promotion manager. He was assigned to assist Sternberg, who was in charge of the national-advertising department. In many respects Schlichter's new work differed from that which he had previously performed. However, the record contains

no convincing evidence that this assignment to new tasks was discriminatory in character. All the new tasks fell within the usual requirements of the department. We, like the Trial Examiner, are not persuaded that any of his assignments were onerous, menial, or imposed upon him because of his union membership.

It is clear from the testimony of both Sternberg and Schlichter that the latter was dissatisfied with his new work. Sternberg's testimony is uncontradicted that, when he suggested to Schlichter that "he get out and call on some accounts and do some selling," Schlichter replied that, "he wasn't interested in selling or learning to sell." Sternberg complained to Business Manager Young, according to his testimony, that he would "like to have a man working with me that was interested in the department and in getting along, going somewhere in there." Sternberg testified that when Schlichter was first assigned to the national department, he advised him, "The thing (the strike) is all over now and there is plenty of work for both of us, lots of it, and if we just forget all about it and get in and dig that he would be able to accomplish quite a lot," but that Schlichter replied, "It wouldn't be of any use because if the Guild loses the case I will be out of here anyway.' " Schlichter denied making this statement. After observing the two witnesses on the stand, the Trial Examiner failed to credit

Schlichter's denial. We find, as did the Trial Examiner, that the conversation occurred substantially as Sternberg testified.

Neither during the strike nor thereafter did the respondent assign anyone to the position of promotion manager. Promotion work has been variously distributed among department heads and for a period in 1939 and early 1940 certain special features were prepared by a free-lance publicist. The Board found in the earlier case that the discharge of Schlichter "whose job was a newly created one and whose work was not immediately productive in a concrete way, was not an unreasonable move for an employer to make when faced with losses and the need for retrenchment." There is no evidence in the record of these proceedings to support a finding that the respondent discriminated against Schlichter by not reopening the position from which the Board found he was justifiably discharged in 1938.

We find, as did the Trial Examiner, that the evidence does not support the allegation in the complaint that Schlichter's discharge in March 1940 was because of his union membership and activity.

IV. The effect of the unfair labor practices upon commerce

We find that the activities of the respondent set forth in Section III B and C, above, occurring in connection with the operations of the respondent

described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Having found that the respondent has engaged in certain unfair labor practices, we shall order that it cease and desist therefrom, and that it take certain affirmative action which we find will effectuate the policies of the Act.

We have found that the respondent discriminatorily deprived the strikers of their bylines after the strike. It is not clear from the record whether or not the respondent has restored their bylines to the strikers. We shall order the respondent to restore their bylines to these employees in the event that it has not already done so. We have found that the respondent discriminatorily discharged Leonard Lugoff. We shall order the respondent to offer him immediate and full reinstatement to his former or a substantial equivalent position, without prejudice to his seniority or other rights and privileges, and to make him whole for any loss of pay suffered as a result of the respondent's discrimination, by paying to him a sum of money equal to the amount he would normally have earned as wages from March 30, 1940, the date of the discrimination against him, to the date of the offer of reinstatement, less

his net earnings during such period¹⁷ and the severance indemnity he received at the time of his discharge.¹⁸

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. Los Angeles Newspaper Guild is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment and terms of employment of Leonard Lugoff, thereby discouraging membership in the Guild, the respondent has engaged in

(17) By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7.

(18) An employee upon discharge is entitled to severance indemnity, a sum of money which varies in accordance with length of service. Lugoff received such severance indemnity upon his discharge.

and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

5. The respondent has not discriminated in regard to the hire or tenure of employment of Karl Schlichter, within the meaning of Section 8 (3) of the Act.

ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, The Citizen-News Company, Hollywood, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Los Angeles Newspaper Guild, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, ~~to~~ form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purposes of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Leonard Lugoff immediate and full reinstatement to his former or a substantially equivalent position without prejudice to his seniority and other rights and privileges;

(b) Make whole Leonard Lugoff for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by paying to him a sum of money equal to that which he normally would have earned as wages from the date of his discharge to the date of the offer of reinstatement, less his net earnings during said period and the severance indemnity received at the time of his discharge;

(c) Restore to the strikers the bylines of which they were deprived following the strike of May 1938;

(d) Post immediately in conspicuous places throughout its plant in Hollywood, California, and maintain for a period of sixty (60) days from the date of the posting, notices to its employees stating

(1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a), (b), and (c) of this Order; and (3) that the respondent's employees are free to become or remain members of the Los Angeles Newspaper Guild, and that the respondent will not discriminate against any employee because of membership or activity in that organization;

(e) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

And it is further ordered that the complaint, in so far as it alleges that the respondent engaged in unfair labor practices with respect to the hire and tenure of employment of Karl Schlichter, be, and it hereby is, dismissed.

Signed at Washington, D. C., this 16 day of Jul. 1941. -

(Seal)

HARRY A. MILLIS

Chairman

EDWIN S. SMITH

Member

WM. M. LEISERSON

Member

NATIONAL LABOR RELATIONS BOARD

In the United States Circuit Court of Appeals
for the Ninth Circuit

#9995

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

THE CITIZEN-NEWS COMPANY,
Respondent.

PETITION FOR ENFORCEMENT OF AN OR-
DER OF THE NATIONAL LABOR RELA-
TIONS BOARD

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Cir-
cuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, c. 372, 29 U.S.C. §151 et seq.), respectfully petitions this Court for the enforcement of its order against respondent, The Citizen-News Company, Hollywood, California, and its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of The Citizen-News Company and Los Angeles Newspaper Guild, Case No. C-1790."

In support of this petition, the Board respectfully shows:

(1) Respondent is a California corporation, en-

gaged in business in the State of California, within this judicial circuit, where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, and including, without limitation, a complaint, respondent's answer to complaint, hearing for purpose of taking testimony and receiving other evidence, Intermediate Report, order transferring case to the Board, respondent's exceptions, and oral argument before the Board, the Board, on July 16, 1941, duly stated its findings of fact, conclusions of law, and order directed to respondent, The Citizen-News Company, Hollywood, California, and its officers, agents, successors, and assigns. The aforesaid order provides as follows:

ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, The Citizen-News Company, Hollywood, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Los Angeles Newspaper Guild, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purposes of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Leonard Lugoff immediate and full reinstatement to his former or a substantially equivalent position without prejudice to his seniority and other rights and privileges;

(b) Make whole Leonard Lugoff for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned as wages from the date of his discharge to the date of the offer of reinstatement, less his net earnings

during said period and the severance indemnity received at the time of his discharge;

(c) Restore to the strikers the bylines of which they were deprived following the strike of May 1938;

(d) Post immediately in conspicuous places throughout its plant in Hollywood, California, and maintain for a period of sixty (60) days from the date of the posting, notices to its employees stating (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a), (b), and (c) of this Order; and (3) that the respondent's employees are free to before or remain members of the Los Angeles Newspaper Guild, and that the respondent will not discriminate against any employee because of membership or activity in that organization;

(e) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

(3) On July 18, 1941, the Board's decision and order was served upon respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Willis Sargent, Esquire, respondent's attorney in Los Angeles, California.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court the transcript of the entire record in the proceeding before the Board, including the pleadings, testimony, evidence, findings of fact, conclusions of law and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the order made thereupon set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring respondent, and its officers, agents, successors, and assigns, to comply therewith.

NATIONAL LABOR RELATIONS
BOARD

By LAURENCE A. KNAPP

Associate General Counsel

Dated at Washington, D. C., this 5th day of December 1941.

District of Columbia—ss.

Laurence A. Knapp, being first duly sworn, states that he is Associate General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the fore-

going petition and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information, and belief.

LAURENCE A. KNAPP

Associate General Counsel

Subscribed and sworn to before me this 5th day of December, 1941.

(Seal)

DANIEL T. GHENT, JR.

Notary Public, District of Columbia

My commission expires August 31, 1944.

[Endorsed]: Filed Dec. 9, 1941. Paul P. O'Brien,
Clerk.

CCA 9 #9995

[ORDER TO SHOW CAUSE]

United States of America—ss.

The President of the United States of America
To The Citizen-News Company, 1545 N. Wilcox
Avenue, Hollywood, California, and Los An-
geles Newspaper Guild, 1031 S. Broadway, Los
Angeles, California, Greeting:

Pursuant to the provisions of Subdivision (e)
of Section 160, U.S.C.A. Title 29 (National Labor
Relations Board Act, Section 10(e)), you and each
of you are hereby notified that on the 9th day of
December, 1941 a petition of the National Labor
Relations Board for enforcement of its order en-

tered on July 16, 1941 in a proceeding known upon the records of the said Board as "In the Matter of The Citizen-News Company and Los Angeles Newspaper Guild, Case No. C-1790," and for entry of a decree by the United States Circuit Court of Appeals for the Ninth Circuit, was filed in the said United States Circuit Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Circuit Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Harlan Fiske Stone, Chief Justice of the United States, this 9th day of December in the year of our Lord one thousand, nine hundred and forty-one.

(Seal)

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

RETURN ON SERVICE OF WRIT

United States of America,
Sou. District of Calif.—ss.

I hereby certify and return that I served the annexed order to show Cause on the therein-named Los Angeles Newspaper Guild by handing to and

leaving a true and correct copy thereof with Urcel Daniel its administrative officer personally at Los Angeles in said District on the 10th day of December, 1941.

ROBERT E. CLARK

U. S. Marshal.

By JOHN P. BROOKE

Deputy.

Marshal's Fees	\$4.00
Mileage	\$.30
Expenses	\$
<hr/>	
Total	\$4.30

RETURN ON SERVICE OF WRIT

United States of America,
Sou. District of Calif.—ss.

I hereby certify and return that I served the annexed order to show Cause on the therein-named The Citizen-News Company, a corporation by handing to and leaving a true and correct copy thereof with Mr. Charles D. Thompson its secretary personally at Los Angeles, Calif., in said District on the 10th day of December, 1941.

ROBERT E. CLARK,

U. S. Marshal.

By JOHN P. BROOKE,

Deputy.

[Endorsed]: Filed Dec. 15, 1941. Paul P. O'Brien,
Clerk.

In the United States Circuit Court of Appeals
for the Ninth Circuit

U.S.C.C.A. No. 9995
Board's Case No. C-1790

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

THE CITIZEN-NEWS COMPANY,
Respondent.

ANSWER OF RESPONDENT, THE CITIZEN-
NEWS COMPANY, TO PETITION FOR
ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Cir-
cuit:

The Citizen-News Company, Respondent in the
above entitled matter, in accordance with Section
10 (e) of the National Labor Relations Act (49
Stat. 449, Chapter 372, approved July 5th, 1935),
hereby answers the Petition presented to this Hon-
orable Court for the enforcement of a certain Order
of the National Labor Relations Board, hereinafter
referred to as the "Board".

In answer to the said Petition to this Honorable
Court, Respondent respectfully admits, denies and
alleges as follows:

(1) Admits the allegations contained in paragraph (1) of said Petition to the extent that Respondent is a California corporation, engaged in business in the State of California, within this judicial circuit, but denies the allegations that it committed any unfair labor practices or that any unfair labor practices occurred by reason of Respondent or its operations in any manner whatsoever, and denies that this Court has jurisdiction of or over this Petition by virtue of Section 10 (e) of the National Labor Relations Act, or otherwise, for the reason that the activities and operations of Respondent, whether as set forth by the Board in the Order sought to be enforced in this proceeding, or otherwise, do not have a close, intimate or substantial relation to trade, traffic or commerce among the several states, and do not lead, or tend to lead, to labor disputes burdening or obstructing commerce, or the free flow of commerce.

(2) Admits the allegations contained in paragraph (2) of said Petition to the extent that proceedings were had in the said manner before the Board and that on July 16th, 1941, the Board did issue and direct its Order to Respondent in the language set forth in said paragraph (2) of the said Petition, but Respondent denies that there was oral argument by Respondent before the Board, and Respondent further denies that the Board had, or has, jurisdiction over Respondent, either for the purpose of proceeding against Respondent, or for the purpose of issuing or directing its Order to

Respondent, or otherwise, in any manner whatsoever, for the reasons set forth in paragraph (1) above of Respondent's answer to the Board's Petition.

(3) Admits the allegations of paragraph (3) of said Petition.

(4) Admits the allegations contained in paragraph (4) of said Petition, except that Respondent denies the Board had, or has, jurisdiction over Respondent to so proceed under Section 10 (e) of the National Labor Relations Act, or otherwise, as it is seeking to proceed by its Petition to this Court.

(5) In further answering the Board's Petition, Respondent respectfully alleges that the Board's Findings of Fact as to those matters set forth in its said Order, for which it seeks enforcement from this Court, are not supported by the substantial and material evidence introduced and received at the trial; and that its Findings of Fact are inadequate, incomplete and insufficient in that important facts which are conclusively established by substantial and material evidence in the case have been disregarded or ignored by the Board; and that its Conclusions of Law pertaining to the matters contained in its said Order, and the provisions themselves set forth in its said Order, for which it seeks enforcement from this Court, are invalid and void as to Respondent, and based on improper, insufficient and unsupported Findings of Fact, unwarranted by the substantial and material evidence contained in the record in this case.

(6) In further answering the Board's Petition, Respondent respectfully alleges that it set forth in its Exceptions to the Intermediate Report of the Examiner, who presided at the hearing, its objections to certain of his Findings, later adopted by the Board, to certain of his Conclusions of Law, also adopted by the Board, and to certain of his Recommendations, later adopted by the Board, all as portions of the Order which it now seeks to enforce; that the Board erroneously, arbitrarily and in abuse of its discretion, overruled, disregarded and failed to take into consideration certain of Respondent's exceptions to the said Intermediate Report of the Examiner; and that since the said Exceptions are part of the record in this case and are to be printed as part of the transcript of record herein, Respondent hereby incorporates each and every objection contained therein, insofar as applicable to the order of the Board sought to be enforced herein, and to the Findings of Fact and Conclusions of Law upon which the said Order is purported to be based, as fully and completely as if entirely set forth herein.

(7) In further answering the Board's Petition, Respondent respectfully alleges that the said Order of the Board, and each and every part thereof, insofar as directed to compliance by Respondent, is invalid and void for the following reasons:

(a) That paragraphs (1) and (2) of the said Order as drawn, if enforced, would deprive Respondent and its officers, agents, successors or

assigns, of their freedom of speech, and the freedom of press under Amendment 1 to the Constitution of the United States.

(b) That paragraph (2) of the said Order as drawn, if enforced, would deprive Respondent of the protection of Amendment 5 of the Constitution of the United States, in that the National Labor Relations Act, when construed under the requirement of the due process clause of the said Amendment 5 to the Constitution of the United States, does not and could not authorize the Board to order and require Respondent to post any notices admitting, stating or implying that it has heretofore engaged in any unfair labor practices, or that it will cease and desist from engaging in any such unfair labor practices in the future.

Wherefore: Respondent prays that the Petition herein be dismissed, that the Board's Order insofar as directed to Respondent be set aside, and that Respondent be given such other and further relief in the premises as to the Court may seem just and proper.

Dated: This 17th day of December, 1941.

THE CITIZEN-NEWS COMPANY

By HARLAN G. PALMER

President

WILLIS SARGENT

Attorney for Respondent

Suite 622 Title Insurance Bldg.

433 South Spring Street

Los Angeles, California

Telephone: MICHigan 7434

State of California,

County of Los Angeles—ss.

Harlan G. Palmer, being by me first duly sworn, deposes and says:

That he is the President of The Citizen-News Company, Respondent in the above entitled action; that he has read the foregoing Answer of Respondent, The Citizen-News Company, to Petition for Enforcement of An Order of the National Labor Relations Board, and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

That he makes this verification for and on behalf of The Citizen-News Company, Respondent herein.

HARLAN G. PALMER

Subscribed and sworn to before me this 17th day of December, 1941.

(Seal) EDITH CETTO

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Dec. 19, 1941. Paul P. O'Brien, Clerk.

HARLAN G. PALMER,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Sokol) Let me inquire, Mr. Palmer, I notice you are taking a pencil and paper to the witness stand. What is the purpose of that?

A. The purpose of that is to make notes of any questions that I wish my counsel to ask me on cross examination.

Q. Isn't your counsel equipped to do that?

A. I am casting no——

Q. Well, I want to expedite my examination and I don't want to prolong it. Your counsel is an able man and certainly he can make the notes.

Mr. Sokol: Can we take a recess for a moment so that that may be arranged?

The Witness: I insist upon jotting down my notes of what I wish to take up with my counsel. [14]

(Testimony of Harlan G. Palmer.)

Q. (By Mr. Sokol) Very well. I am certainly not going to get in your way, Mr. Palmer, but I know that you want to expedite this and so do I.

Will you state your business or occupation?

A. I am publisher of the Hollywood Citizen-News, a daily newspaper, and I am the president of the Citizen-News Company that owns the Hollywood Citizen-News.

Q. The correct name of the company is the Citizen-News Company? A. Correct.

Q. Is there a hyphen between "Citizen" and "News"? A. There is.

Q. In what does that company engage?

A. Its activities consist of publishing the Hollywood Citizen-News daily newspaper, the Hollywood Advertiser, a weekly free circulation newspaper, doing commercial printing, press work on some publications, and composition and press work on some other publications, doing commercial job printing and operating a retail stationery store.

Q. All of those operations are in the town of Hollywood, California?

A. In the city of Los Angeles, and in that section of Los Angeles known as Hollywood.

Q. Yes. Now, with respect to the advertiser, that is just an advertising medium that is inserted in the Citizen-News? [15]

A. It is a free circulation publication. The advertiser is distributed to all the homes in a given

(Testimony of Harlan G. Palmer.)

area and the sections pertaining to a given area are enclosed with the Citizen-News on Thursday night.

Q. As I understand it you stated the Citizen-News was a daily paper. It is daily except Sunday; is that right?

A. A daily paper except Sunday.

Q. Does the advertiser have any wire service or syndicates?

A. No, sir.

Q. Now, with respect to the other publications on which you do composition and press work; what are they?

A. The Hollywood Shopping News. We do all the work in publishing the Hollywood Shopping News, it being owned by a separate corporation which the Citizen-News Company is one of the stockholders. The manager of the Shopping News has his desk with the Citizen-News and all operations are conducted from that place.

The Southwest Wave publication sends over its mats and we do the stereotyping from the mats and all the press work.

Q. Let me make this a little briefer; Let me ask you, during the year 1939 and 1940, did you do any work on publications which have national circulation to your knowledge?

A. 1939 to 1940?

Q. Yes, to the present time, in other words.

A. Well, we formerly did work on the Hollywood Daily Variety. [16]

(Testimony of Harlan G. Palmer.)

Q. What kind of a publication is that?

A. That is a magazine type of publication on a magazine size page, printed primarily for those interested in the motion picture industry, carrying mainly motion picture news.

Q. In other words——

A. I have forgotten when we ceased publishing that publication, I think possibly a year ago.

Q. That is a trade publication for the film industry, the *Variety*?

A. Yes, a publication for those interested in motion picture news primarily.

Q. And so far as you know it circulates in other states other than California? A. Yes.

Mr. Sokol: Now, may we go off the record?

Trial Examiner Whittemore: Yes. Off the record.
(Discussion off the record.)

Trial Examiner Whittemore: On the record.

Mr. Sokol: I understand, Mr. Examiner, that respondent admits the allegations of paragraph 2 of the complaint and paragraph 3 with the explanation which is about to be made by Mr. Sargent, its counsel, modifying in substance the allegations with respect to the receipt and transmittal of news and intelligence. Will you state that for the record?

Mr. Sargent: Subject to any other variations contained in [17] their answer, if there be any, the allegations in paragraph 2 of the complaint are correct, except that where Associated Press and

(Testimony of Harlan G. Palmer.)

United Press News from without the state come to respondent's plant, they do so through California offices of the Associated Press and United Press, and are transmitted by those California offices to respondent's plant. Likewise, when news or intelligence is gathered by the staff of respondent, it then becomes available in the plant to the Associated Press and United Press, which transmits such of the news and intelligence as it may so desire to its offices within California and thereafter and only thereafter may such news or intelligence be transmitted outside the state.

There were several other minor matters in paragraphs 2 and 3 and that is why I didn't think my stipulation as sweeping as you asked me, Mr. Sokol, but I would be glad to clear up anything where we have any doubt.

Mr. Sokol: I think that is clear.

With respect to the percentages stated in paragraph 2, those are substantially correct?

Mr. Sargent: Substantially correct.

Mr. Sokol: And with respect to paragraph 3?

Mr. Sargent: I believe you should ask that question of the witness.

Q. (By Mr. Sokol) Is that right?

A. Yes. [18]

Mr. Sokol: With respect to paragraph 3 I think you want to make a qualification of that stipulation. In other words, I allege here that all of the newsprint is shipped to respondent's plant from British

(Testimony of Harlan G. Palmer.)

Columbia, Canada. I think you have some modification of that.

Mr. Sargent: Well, again, as stated in the answer, a portion of the newsprint does come, I understand, from British Columbia, but the statement that all of it is shipped to respondent's plant from British Columbia, Canada is incorrect.

There is no allegation in the answer as to where it comes from, so that respondent is not trying to prove any statement to the contrary, except to make the pleadings accurate in denying that all of the newsprint comes from British Columbia.

Q. (By Mr. Sokol) Does all of it come from outside the state of California? A. Yes.

Mr. Sargent: All of it does come from outside the State of California.

Mr. Sokol: Is that a stipulation?

Mr. Sargent: Yes, we will so stipulate.

Mr. Sokol: I will accept that.

Mr. Sargent: Have you covered all the questions you wanted to?

Mr. Sokol: Yes.

Trial Examiner Whittemore: May I simply inquire at this [19] time: Does respondent concede that it is engaged in interstate commerce?

Mr. Sargent: I should say not. We have fought that question out on several occasions before and we deny emphatically that we are engaged in interstate commerce or that the activities of the respond-

(Testimony of Harlan G. Palmer.)

ent have a close and intimate relationship with interstate commerce, or that a labor dispute in the plant would have a bearing upon interstate commerce, and all the other clauses which might be necessary to make the denial generally, specific, and otherwise. [20]

The Witness: The contract made with the Guild this year was for the year July 1st, 1940 to July 1st, 1941 and it was the third contract made with the Guild. The second contract then would have been in 1939; and the first contract would have been in 1938. And negotiations on the first contract began in the latter part of 1937. [26]

A. Well, I know that to our department heads I have repeatedly stated that our employees were entitled to join or belong to a union of their own choosing.

Q. When did you first say that? [31]

Q. Now, my original question was this: Have you ever talked to any employees exclusive of the supervisory employees, I am referring specifically to employees who are not part of the management, have you ever talked to them about union activities?

A. I told you that I told our composing room men they had the right to join or not to join a union of their own. [34]

A. There were at least 25 of our employees who were members of the Guild who did not join the

(Testimony of Harlan G. Palmer.)

strike, whose cards were torn up because they did not join the strike, not having had a privilege to vote on the strike, and several of those—I can't name anyone specifically—several of those said that they had been members of the union and that their cards had been torn up. [35]

Q. (By Mr. Sokol) I now ask you concerning Mr. Lugoff's discharge, in your Answer you set up that in August, 1938, when these employees had gone out on strike and were returning, in substance that Mr. Lugoff was discharged about that time?

A. Yes, that is right.

Q. Now, did you personally discharge him at that time?

A. No. The discharge was with my approval.

[71]

Q. What?

A. He was discharged with my approval, however.

Q. I see. A. Yes.

Q. Who discharged him?

A. I don't distinctly remember but presumably Mr. Tobin. It might have been Mr. Young. It possibly was Mr. Young. Mr. Tobin might have been on vacation then but I haven't a recollection of who did the actual discharging.

Q. Did you make any record for the reason of his discharge in August, 1938?

A. I don't know. There is a record card, it speaks for itself.

(Testimony of Harlan G. Palmer.)

Mr. Sokol: Let's have that marked Board's Exhibit 5 for identification.

(Thereupon, the document referred to was marked as Board's Exhibit No. 5 for identification.)

Q. (By Mr. Sokol) Do you see any notation on the card on his employment record as the reason for his discharge in August, 1938?

A. Yes. The reason was low production. I don't know when that was entered.

Q. Show me any such notation as to August.

A. Low production.

Q. As to August, 1938? [72]

A. I don't know when it was made.

Q. Don't you see the date March 30, 1940?

A. I see that on the higher line, the date of his final discharge.

Q. Yes. A. Yes.

Q. But doesn't that remark "low production" apply to that particular date, or does it?

A. It applies to both dates, yes.

Q. You say it applies to both dates?

A. I know it does. That was why he was discharged both times, for low production.

Q. Will you show me a notation on here about low production being the reason for his discharge in August, '38?

A. No, but he knows he was discharged and he knows that he was reinstated.

(Testimony of Harlan G. Palmer.)

Q. My question was simply whether this document, Board's 5 for identification, reflects any reason for a discharge in August, 1938?

A. The document speaks for itself, Mr. Sokol.

Q. Thank you. Now, at that time did you confer with Mr. Tobin or Mr. Young concerning Mr. Lugoff in August, 1938?

A. Yes, I conferred with Mr. Young with reference to Mr. Lugoff because of Mr. Lugoff's appeal for reinstatement.

Q. I mean prior to that time, about the discharge did you [73] confer with anyone? You said that his discharge in 1938 had your approval?

A. Yes, because of low production.

Q. Did you discuss it with anyone?

A. Yes, I discussed it with someone.

Q. With whom did you discuss it?

A. Either Mr. Young or Mr. Tobin and perhaps with both, I don't know.

Q. Do you remember what Mr. Lugoff's production at that time was?

A. Well, I have got the figures on the production.

Q. May I have those figures?

A. Yes. The figures for 1938, 1939 and to and including the week of March 28, 1940.

Q. Did you personally get out these records?

A. No.

Q. Who got them up?

(Testimony of Harlan G. Palmer.)

A. They came to me from Mr. Tobin, the classified manager.

Q. Well, you don't have the lineage production here?

A. No, that is his earnings, the amount he earned for his production.

Q. Well, I requested the amount of lineage for these employees.

A. If we have got a record I will be glad to bring it.

Mr. Sokol: May this be marked Board's Exhibit 6A, 6B [74] and 6C.

(Thereupon, the documents referred to were marked as Board's Exhibits 6A, 6B and 6C for identification.)

Trial Examiner Whittemore: Off the record.

(Discussion off the record.)

Trial Examiner Whittemore: On the record.

Q. (By Mr. Sokol) Now, you recall that you discussed his discharge in August, 1938, with someone? A. Yes.

Q. You don't recall what was said?

A. Well, excepting that his production was low.

Q. At that time the strikers were returning to the plant? A. Yes, sir.

Q. Now also a number of people whom you had discharged, Guild people, whom you had discharged previous to the strike were returning to their work, their jobs? A. Yes.

(Testimony of Harlan G. Palmer.)

Q. How many people? A. Five.

Q. And the reason for your discharge of those people was what? Of those five?

A. It was that business was off compared to a year ago and that we could reduce our staff. We were warranted in reducing our staff.

Q. Did you ever examine your financial records to see whether [75] or not the business was off?

A. Oh, I know it was off, yes, sir.

Q. You did? A. Yes.

Q. That is the reason I want those financial records.

A. Well, the financial statement will not show that. I can show you the lineage of figures.

Q. But the income and expenditures will?

A. Yes.

Mr. Sargent: Your Honor, this is precisely the issue upon which the former case was tried and so far as the Board is concerned it is *res adjudicata*.

Q. (By Mr. Sokol) Let me ask this question: Did you ever submit your financial records at the previous hearing?

A. Yes, we gave the figures as to profit and loss on a comparative basis.

Q. But did you produce your books at the hearing? A. No.

Trial Examiner Whittemore: It seems to me we are getting into the other case.

Mr. Sokol: I am not getting into that.

(Testimony of Harlan G. Palmer.)

Trial Examiner Whittemore: Let's not bring it in at this point.

Q. (By Mr. Sokol) So you reinstated Lugoff even though his production was off, isn't that right, in August, 1939? [76]

A. After his plea, and I should like to state the grounds.

Q. When did his plea occur? What day?

A. I couldn't tell you.

Q. Would the date August 22, 1938, refresh your recollection? A. No.

Q. It was in August, 1938?

A. Well, it was after the strike.

Q. Where did this conversation take place?

A. Mr. Lugoff's conversation with me took place in my office.

Q. Who was present?

A. I think Mr. Lugoff and me.

Q. Did you swear to your answer in this case?

A. Yes.

Q. In other words, you took an oath that the statement with regard to your conversation with Lugoff as stated in the Answer was true, is that right? A. Yes, in substance.

Q. Who opened that conversation?

A. Well, the conversation was opened by him. It was at his request that he be reinstated.

Q. What did he say?

A. Well, in substance, I can give it to you.

(Testimony of Harlan G. Palmer.)

Q. I want you to be accurate about this conversation. A. I can't give it to you. [77]

Q. I may advise you, Mr. Palmer, that I have some instruments concerning this transaction and that is why I would like to have you be accurate about it.

A. I cannot be accurate. I won't attempt to be accurate.

Q. Now, you say Lugoff started the conversation, anyway? A. Yes, he did.

Q. What did he say?

A. Well, that the strikers had been returned to their jobs, that five people we had discharged for economy were being reinstated until the end of the National Labor Relations Board case and that he, Lugoff, had not gone out on strike and he did not believe that he should receive any less treatment than those who had been on strike.

Q. Continue. A. That in substance was it.

Q. Was that the whole conversation?

A. Well, that is the substance of it. The appeal was made.

Q. Now, what did you say?

A. I don't know whether I said to him, or whether I first discussed it with Mr. Young, but anyway I reached the conclusion——

Q. Do you know whether you discussed that with Mr. Lugoff at that point?

A. No, I don't.

(Testimony of Harlan G. Palmer.)

Q. Did you or didn't you? [78]

A. I don't know.

Q. Your answer is you are not positive that you discussed at that point how and under what circumstances Mr. Lugoff was to be reinstated, isn't that right?

A. That is right.

Q. Now, what was the next that occurred? You discussed it with Mr. Young?

A. With Mr. Young and possibly with Mr. Tobin, I can't recall.

Q. Are you referring to any notes about this transaction?

A. No.

Q. Did you make any notes on that occasion?

A. No.

Q. Now, you have discussed it with either Mr. Tobin or Mr. Young?

A. Perhaps both, I don't know.

Q. What did you discuss with them?

A. Mr. Lugoff's appeal.

Q. What did you say about it?

A. I said that I thought it was—that there was a great deal of merit in his appeal.

Q. All right.

A. And that since we were under obligation, by virtue of our agreement we were taking other people pending decision, we saw no reason why Mr. Lugoff shouldn't be given equal consider- [79] ation.

Q. Did you see Mr. Lugoff after that?

A. Well——

(Testimony of Harlan G. Palmer.)

Q. At that time did you reinstate him personally? A. No, I don't think I did.

Q. Who reinstated him?

A. Well, I can't say whether Mr. Tobin did or Mr. Young.

Q. Did you tell Mr. Young what to say to him?

A. No.

Q. You didn't? A. No.

Q. What did you tell Mr. Young to tell Mr. Lugoff, that he was reinstated under the precise conditions that these five people were reinstated pursuant to that strike settlement agreement?

A. No, I don't recall telling Mr. Young to tell him that precisely. That was the basis of Mr. Lugoff's appeal.

Q. Did you tell Mr. Young when Mr. Lugoff's employment was determined? A. No, no.

Q. Did you ever tell Mr. Lugoff that he would be reinstated under the precise conditions that the five employees named in the strike settlement agreement were reinstated?

A. No, I personally didn't tell him that.

Q. Did you determine to—when did you discharge Mr. Lugoff [80] after that?

A. I say I am not sure. I personally didn't discharge him.

Q. The last time?

A. Oh, the last time. His notice went out the same time as Mr. Schlichter's, I am sure.

(Testimony of Harlan G. Palmer.)

Q. Why? A. Why?

Q. Yes.

A. Because he had been reinstated because these other people were being reinstated. They now were being let out and Mr. Lugoff was in the same position as to unsatisfactory production as he was and he should also be let out, for that reason he was let go. Our obligations to Mr. Lugoff, to be fair with him on the basis of dealing with the others, had ceased. The others were being let off.

Q. What obligations did you have to him?

A. Only the obligation that was represented by his appeal, that since those who had been on strike were being taken back he, Mr. Lugoff, should be reinstated.

Q. You were forced by a strike settlement agreement to take these five employees back?

A. Yes, that is right.

Q. You didn't want to take them back?

A. No, that is right. [81]

Q. Now, why did you take Mr. Lugoff back in August, 1938?

A. Because if we could take back the others under force there was no reason why we shouldn't take Mr. Lugoff back under a gentlemanly appeal.

Q. Now, under the same reasoning, why didn't you extend your leniency to that particular date in March, 1940, when you discharged him?

A. The reason then has ceased to exist.

(Testimony of Harlan G. Palmer.)

Q. Now, let me ask you this: When Mr. Lugoff came out to see you with his appeal in August, 1938, did he say anything about his being a Guild man, a member of the Guild?

A. As I told you before I have no recollection of Mr. Lugoff ever telling me that he was a Guild member.

Q. Then would you deny that he told you?

A. No, I wouldn't deny it, no, sir. No, I would not.

Q. Would you deny that you asked him whether he was a Guild member?

A. I am very positive that I didn't.

Q. Why are you positive?

A. I have no recollection of asking anyone if he was a Guild member, no recollection whatsoever.

Q. Did you know that Mr. Lugoff was a member of the Guild in March, 1940?

A. I had reason to believe that Mr. Lugoff was a member of the Guild in 1940. [82]

Q. How did you come to that conclusion?

A. Because I had seen Mr. Lugoff attending a Guild meeting.

Q. Now, you then discharged Mr. Lugoff in March, 1940. Do you have the letter of discharge you sent him? You sent him a registered letter?

A. I think so. I think that is the letter that went out.

Q. Was it the same time you dispatched the

(Testimony of Harlan G. Palmer.)

letter to Mr. Schlichter that you dispatched the letter to Mr. Lugoff?

A. Yes, I think it was. As I say I am not sure that that is the copy but I believe it is.

Mr. Sokol: Will you mark this for identification as Board's Exhibit 7?

(Thereupon, the document referred to was marked as Board's Exhibit No. 7 for identification.)

Q. (By Mr. Sokol) You have just handed me Board's 7 for identification? A. Yes.

Q. Now, you sent this by registered mail that afternoon or the evening of March 30th, is that right, on Saturday, A. Presumably.

Mr. Sokol: I will offer that in evidence.

Mr. Sargent: May I see it just for a second?

Mr. Sokol: Yes.

Q. (By Mr. Sokol) Both of these letters to Schlichter and Lugoff of March 30, 1940, were signed by yourself as pub- [83] lisher?

A. Well, that copy would appear that way. My recollection was until I discovered that "publisher" that Mr. Young had signed them but I would rather leave it to Mr. Lugoff and Mr. Schlichter as to whether or not—if they *way* my signature was on I will accept their word.

Mr. Sokol: I will offer this as Board's Exhibit 7 into evidence.

Mr. Sargent: I have no objection.

(Testimony of Harlan G. Palmer.)

Trial Examiner Whittemore: It will be received.

(Thereupon, the document heretofore marked for identification as Board's Exhibit No. 7 was received in evidence.)

BOARD EXHIBIT 7

March 30, 1940

Mr. Leonard S. Lugoff,
1149 N. Genessee,
Hollywood, California.

Dear Mr. Lugoff:

This notice is to terminate your services with us effective this day. Your production does not justify your employment.

Yours very truly,

Publisher.

HGP/T

Q. (By Mr. Sokol) Did you confer with anyone concerning Mr. Lugoff's discharge on this occasion? A. Yes.

Q. With whom did you confer?

A. Well, I believe only with Mr. Young, but I believe that Mr. Young conferred with Mr. Tobin before. I am not certain about that.

Q. Did you analyze Mr. Lugoff's production?

A. Yes.

Q. There are slack periods in the sale of classified advertising, aren't there? A. Yes. [84]

(Testimony of Harlan G. Palmer.)

Q. What are those slack periods?

A. I couldn't blame them.

Q. You are not an expert in that field, is that right?

A. I am not an expert man in classified, no, but I know there are ups and downs.

Q. Now, I am going to ask you a question and then I think in replying you should have before Board's 6A, 6B and 6C for identification. My question is this: The lowest point of Mr. Lugoff's production was in the week of August,—

A. You are looking now at the record for 1938.

Q. In August, 1938. That was the lowest point of production?

A. That is right for '38.

Q. I mean the lowest point since 1938.

A. Yes, it appears to be from these figures.

Q. Now, since August, 1938, according to these records, his next lowest point of production was somewhere around \$18 in December, 1939?

A. December, 1939, February, 1940, and March 1940 he had production as low as \$18 and some odd cents.

Q. He increased his production after that, didn't he? He increased his production in March just prior to his discharge?

A. The week to which you refer was December 28th. His earnings then were \$18.69. The week January 1st his earnings were \$18.87, January 18th, \$18.64, February 29th, \$18.84. [85]

(Testimony of Harlan G. Palmer.)

Q. Pardon me, I will withdraw the question because—— A. March 14th, \$18.52.

Q. Well, he was increasing his production towards the end?

A. No, I couldn't say that. That is what I was just reading.

Q. Well, look here (indicating).

A. Well, the week of March 14th his earnings were \$18.52, and he was paid \$24.00. Now, you are comparing that with the week of December 29th when his earnings were \$18.69. Now, I couldn't tell you whether they were increasing or not on that.

Q. On the next week of March 24th, his earnings were \$20.10? A. \$20.10.

Q. And the next week, March the 28th, \$22.30, is that right? A Yes.

Q. Do you know what commission Mr. Lugoff was getting on his lineage?

A. No, he was working against the \$24.00 a week guarantee.

Q. Now, did you know that other people doing the same type of work showed earnings higher than Lugoff because they were getting a higher rate of commission?

A. No, I don't know, the classified man arranges that.

Q. Now, these earnings, what do they reflect?

(Testimony of Harlan G. Palmer.)

Doesn't that reflect so much per line which the man gets? A. That is right. [86]

Q. And it is on the basis of commission per line that these earnings are calculated?

A. That is right.

Q. Did you know when you finally discharged Mr. Schlichter that he had been longer in your employ than other employees who were doing the same type of work, who were getting a larger commission?

A. No, that didn't make any particular difference to me.

Q. It didn't?

A. No. That meant Mr. Lugoff got more severance, say, with his length of time he got more severance time.

Q. You had a general guarantee of \$24.00 a week, isn't that right?

A. That was Mr. Lugoff's guarantee.

Q. That was general in his department?

A. It applied to some others besides Mr. Lugoff but I don't know how many others.

Q. Did you make any investigation to ascertain what income Mr. Lugoff was bringing into the company despite what he earned on the paper?

A. What do you mean?

Q. Here, let me explain it. I have never sold advertising but when a solicitor goes out and sells an ad—Mr. Lugoff was a classified solicitor, wasn't he? A. Yes. [87]

(Testimony of Harlan G. Palmer.)

Q. When he goes out and sells an ad, there is a certain revenue which comes to the paper from that ad? A. That is right.

Q. Deducted from that revenue is the overhead, the commission, which goes to the solicitor?

A. That is right.

Q. And the solicitor is making more revenue than another solicitor on the paper but is getting less commission, that would reflect a greater revenue for the paper, wouldn't it?

A. Yes, but it wouldn't reflect more to Mr. Lugoff's credit necessarily.

Q. Did you investigate what revenue he was producing for the paper? A. No, but——

Q. Did you consider it important to find out how much money you were making on Mr. Lugoff's services?

A. No, as long as I believed that somebody else could do better than Lugoff.

Q. Who was the person you believed could do better?

A. I thought most anybody could.

Q. Whom did you have in mind?

A. I didn't have anybody in mind. I thought anybody could who would work hard. Mr. Lugoff in my opinion is lazy and I thought that most anybody who was enterprising could produce more than he. [88]

Q. Had you ever seen Mr. Lugoff on his territory?

(Testimony of Harlan G. Palmer.)

A. Yes, I have seen him sleeping in his car parked along the street there in the afternoon.

Q. When was that?

A. Well, I couldn't tell you when but——

Q. What year?

A. Sometime before his discharge.

Q. How long before his discharge?

A. Oh, I don't know. It may have been three months or two months, any time.

Q. Any time?

A. Yes, any time before his discharge.

Q. A year, six years or ten years?

A. As a matter of fact, I think Mr. Lugoff before his discharge was regularly loafing in the afternoon.

Q. Sleeping there in his car?

A. I don't know whether he was sleeping or not.

Q. How do you know that? A. What?

Q. How do you know that he was loafing in the afternoon?

A. Well, because I have seen him sitting in his car one time when I was sure he was sleeping.

Q. Where did this occur? Where did you see him sleeping in his car?

A. On Wilcox Avenue. [89]

Q. Where on Wilcox Avenue?

A. Well, I couldn't tell you, some place between Selma and Sunset.

Q. What time of day was it?

(Testimony of Harlan G. Palmer.)

A. Well, I couldn't tell you that. I would say probably 1:30 or 2:00 o'clock.

Q. What part of the year?

A. I couldn't tell you that.

Q. Summer or winter? We get a little lazy out here in the summer.

A. I couldn't tell you that.

Q. Was it winter, summer, spring or when was it?

A. I couldn't tell you.

Q. How many times did you see him in that position?

A. Well, I never saw him excepting once when I thought he was asleep, but I have seen him in his car a good many afternoons.

Q. You saw him in his car. How far away were you when you saw him in his car when you thought he was sleeping?

A. That time I walked by.

Q. You walked by?

A. Yes, on the sidewalk.

Q. Was he on your side in the driver's seat or in the other compartment?

A. He was in the front seat. [90]

Q. Did you wake him up?

A. No.

Q. What was he doing at the time?

A. Well, I am sure he was sleeping.

Q. Why do you say that? His eyes were closed or something like that?

A. Yes, they appeared to be.

Q. How long did you stand there?

(Testimony of Harlan G. Palmer.)

A. I didn't stand there; I just walked by.

Q. You just walked by?

A. Yes, that is right.

Q. At your normal pace? A. Yes.

Q. Didn't you stop to observe him?

A. No.

Q. Did you complain to anyone about that?

A. I didn't have to complain because other——

Q. I am asking you: Did you?

A. No. Others had told me——

Q. Had you ever complained about Mr. Lugoff?

A. Complained to whom?

Q. To anyone?

A. No. I didn't have to. Others would complain to me.

Q. Who complained to you?

A. Mr. Tobin, Mr. Young. [91]

Q. When did Mr. Tobin complain to you?

A. Oh, I can't tell you a specific time.

Q. What year?

A. Well, certainly before August, 1938.

Q. All right. What was his complaint at that time?

A. Well, that Lugoff wasn't producing what he thought he was capable of producing if he worked.

Q. How many times did Mr. Tobin complain to you prior to August of 1938?

A. Oh, I don't know, a couple of times, anyway.

(Testimony of Harlan G. Palmer.)

Q. Would you place it more than a couple of times?

A. No, I can't state any definite number of times.

Q. Do you recall any other occasions of receiving any complaints about Mr. Lugoff?

A. No, not specifically.

Q. Did you call Mr. Lugoff in and talk to him on this occasion? A. No.

Q. On the final discharge? A. No, no.

Q. Well, he had been one of your oldest employees, hadn't he?

A. Well, he had been there whatever years the card shows, I don't know.

Q. Well, so far as you knew, he was one of your oldest men? [92]

A. I don't think he was one of the oldest nor among the oldest.

Q. I mean he had been there for more than six years? He had been with the old paper, The News, you knew that, didn't you?

A. No, I didn't know that.

Q. Well, you took him over from the old organization?

A. If he says so, we did. I haven't a specific recollection.

Q. Well, you always had a fatherly attitude toward him, didn't you?

A. No, I don't think I had a fatherly attitude.

(Testimony of Harlan G. Palmer.)

I welcomed anybody to come in and talk with me but I hoped it wasn't fatherly.

Q. Anyway you just sent him a registered letter too? A. Yes.

Q. Why didn't you say in your registered letter to him that he was being discharged because the other people were discharged in accordance with the Board's decision?

A. Because I knew he would find that out in the course of time.

Mr. Sokol: Well, it is after 12:00.

Trial Examiner Whittemore: You have finished with this line of questioning?

Mr. Sokol: Yes.

Trial Examiner Whittemore: And it is a good point to [93] recess?

Mr. Sokol: Yes.

Trial Examiner Whittemore: Then we will recess until 1:30.

(Whereupon, at 12:00 o'clock a. m., a recess was taken until 1:30 o'clock p. m.) [94]

After Recess

(Whereupon, at 1:30 o'clock p. m., the hearing resumed, pursuant to recess.)

Trial Examiner Whittemore: The hearing will come to order. Proceed.

HARLAN G. PALMER,

a witness called by and on behalf of the National Labor Relations Board having been previously duly sworn, was examined and testified further as follows:

Direct Examination

(Continued)

Q. (By Mr. Sokol) Mr. Palmer, who is in charge of hiring and firing at the plant?

A. Well, I would say I was in charge of the firing.

Q. Have you always had that particular position?

A. Of approving any department head's conclusion that a person should be fired, why, I have always asked for the right to approve it.

Q. Is it true that up to the time of these union activities that so far as you know no one had ever been discharged at the plant?

A. Why, I would have to go over the records.

Q. At this time so far as you know from your memory, you know of no one who was discharged prior to these union activities, is that correct?

A. I am sure persons were discharged.

Q. What? [95]

A. I am sure persons were discharged.

A. Can you name any one of them?

A. No.

Q. I wish you would check that from your rec-

(Testimony of Harlan G. Palmer.)

ord because that is my understanding and I would like to have you tell us whether or not that is so.

A. Up to 1937 the Citizen News was growing and there would be less incentive—less opportunity to lay off than from there on.

Q. Now, can you explain the method of hiring and discharge? Do the people who want employment come directly to the department head?

A. As a rule, or they are sent to the department head. General employment applications are filed in my office, in the outer office, general applications.

Q. Do you pass on them personally?

A. Well, most of them are filed when we have no openings whatsoever and they are merely filed for reference in the event an opening develops. If an opening develops the department head would probably come to our office to look over applications, if he didn't have some one before him.

Q. What I am trying to ascertain is whether in the discharge of Mr. Schlichter and Mr. Lugoff, yours was a secondary interest? I mean the man who was supposed to handle that particular job was their immediate department head; is that [96] correct?

A. Well, no. Mine was the primary interest.

Q. Why?

A. Well, because I had been the one who had been the leader, or at least carrying the brunt of the National Labor Relations Board activities as I

(Testimony of Harlan G. Palmer.)

related, and I was the logical one to give the decision as to whether or not, when the Board handed down its decision, we were justified in laying off the two men. It was my decision to make and I did.

Q. There is one point that comes to me: As you recall you stated that Tobin, either Tobin or Young discharged Lugoff in August, 1938?

A. With my approval.

Q. Yes. A. With my approval.

Q. But this last time you did it yourself?

A. That is right.

Q. You initiated the discharge?

A. That is right.

Q. The general handling of those matters, except in these special cases of Schlichter and Lugoff, is in the hands of the department head, isn't it?

A. No, no discharges. The department head should refer any discharge to me unless it is something that occurs that [97] demands action on the spur of the moment.

Q. I understand that, but here is what I am trying to get at: With the exception of these two cases, and the cases of the other five employees who were reinstated under the strike settlement, with those exceptions, the other discharges that you know of all were handled first by the department head who had referred the discharges to you; is that right? A. The suggestion for the discharge.

(Testimony of Harlan G. Palmer.)

Q. Yes. In other words to clarify it, do you recall of any other instance when you yourself discharged anyone other than these people who were involved in the strike settlement agreement, and Lugoff?

A. Well, the people involved in the strike settlement agreement and Lugoff and Schlichter in this case are two entirely different cases.

Q. With the exception of the people named in the strike settlement agreement and Schlichter and Lugoff, have you ever directly discharged anyone other than those people yourself?

A. Well, the only two direct discharges were these two now before us.

Q. Are those the only people that you have ever discharged directly?

A. No, no, I don't think so.

Q. Can you name any person you discharged directly? [98]

A. Well, I am of the opinion that I directly discharged Lawrence Hill, a city editor.

Q. He is more supervisory, I am talking about the regular people.

A. No, I don't recall of a specific instance.

Q. Just Lawrence Hill?

A. Not just Lawrence Hill. I mean a specific instance of a regular employee not being discharged through his department head. The two cases before us——

(Testimony of Harlan G. Palmer.)

Q. And Hill.

A. I took the responsibility—no, if some other department head was laid off, I think Homer King, unfortunately I had to be the one responsible for him. I think a bookkeeper I had to be responsible for who embezzled funds.

Q. To get even more specific, can you recall at this time any ordinary employee in the classified or display departments that you discharged directly?

A. Not a sales person, I cannot.

[99]

Q. Can you explain to the Examiner why if you had to economize at that time, why you put Mr. Lugoff back to work in 1938?

A. I can only endeavor to repeat the same reasoning that I repeated this morning, that Mr. Lugoff's appeal was on the grounds that these five people had been reinstated when the management believed it could dispense with their services and that therefore he, Mr. Lugoff, who had not been on the strike, certainly should be given the same consideration, the same kind of treatment as those who had been out on strike.

Q. Would you have extended the same to any other employee?

A. If a similar appeal had been made to me?

Q. Yes.

A. I don't see how I could have refused it.

Q. Now, after the people returned after the

(Testimony of Harlan G. Palmer.)

strike did you change rules with respect to conduct of employees? [116]

A. In what respect? I don't recall any.

Q. For instance, prior to the strike the people up in the editorial department and elsewhere throughout the plant could use the typewriters for their own personal letters, couldn't they?

A. So far as I know they continued to use them.

Q. But didn't you post a rule against that right after *the* returned in August, 1938?

A. Just a minute, I will have to see.

Mr. Sokol: Will you mark it Board's Exhibit 12 for identification?

(Thereupon, the document referred to was marked as Board's Exhibit No. 12 for identification.)

Q. (By Mr. Sokol) I show you Board's Exhibit 12 for identification, are those the rules you just handed me which were posted after the strikers returned?

A. This is what I believe is a copy of the rules posted by Mr. Swisher, the managing editor, on August 15, 1938.

Mr. Sokol: I offer those into evidence.

Trial Examiner Whittemore: Any objection?

Mr. Sargent: No.

Trial Examiner Whittemore: It is received.

(Thereupon, the document heretofore marked for identification as Board's Exhibit No. 12, was received in evidence.) [117]

(Testimony of Harlan G. Palmer.)

Q. (By Mr. Sokol) Now, did you have any part in drawing up these rules? A. No, sir.

Q. Do you know whether there were any rules previously posted with respect to the conduct of employees? A. I couldn't say, no, sir.

Q. Right after the strike you editorialized upon the strike and what had transpired; is that correct?

A. An editorial was written, as I recall, and printed.

Q. Do you have that?

A. We have the files here. Do you know the date, Mr. Sokol?

That would be in August—well, I have copies, I don't want the whole file. It would be about August 15th. The strike was settled on the 30th of July.

Trial Examiner Whittemore: We will go off the record until you have located this.

(Discussion off the record.)

Trial Examiner Whittemore: On the record.

Q. (By Mr. Sokol) After the strike you came to the conclusion that the Guild was out to destroy you; is that right? A. After the strike?

Q. Yes, and before the strike.

A. During the strike I came to the conclusion that the Guild was out to destroy us. [118]

Q. And you have been of that opinion ever since, have you?

A. Well, either the Guild or the National Labor Relations Board, yes. I think that one or the other

(Testimony of Harlan G. Palmer.)

is out to destroy us. They are trying to compel us to close our doors, yes.

Q. You considered yourself somewhat of a liberal or even a radical at times prior to this union agitation, haven't you?

A. No, I didn't so consider myself. I have been charged even with being a communist, but I don't so consider myself.

Q. Well, you considered yourself a liberal?

A. No.

Q. With respect to labor organizations, you favored labor organizations, did you?

A. Yes, I never have battled with a labor organization except when they compelled me to defend my business in the strike.

Q. Well—

A. I believe in unionism, yes, if you want to know that, I do.

Q. I didn't ask you that. I move to strike that as not responsive.

Trial Examiner Whittemore: It may be stricken.

Mr. Sargent: It is part of the general picture, your Honor.

Trial Examiner Whittemore: Well, if you feel it is important to your case, make a note of it. [119]

Mr. Sargent: Well, this is in the nature of cross-examination even though it is on direct.

Q. (By Mr. Sokol) Why did you come to the conclusion that the union was out to destroy you.

(Testimony of Harlan G. Palmer.)

A. Because of their activities during the strike.

Q. What activities are you referring to?

A. All sorts of activities, publications, loud speaker, everything denouncing Judge Palmer and The Citizen-News as a dishonest, unscrupulous institution. "Palmer is a law violator and a rattlesnake." And things like that couldn't help but, if believed, to do permanent injury to the institution.

Q. Your policy, however, when you first started up the publication was against recognition of a union, wasn't it?

A. My policy what?

Q. When you first started in the newspaper publishing business?

A. No.

Q. How about the typographical union?

A. In reference to the typographical union, you will notice if you will read the testimony of John Dalton before the National Labor Relations Board, John Dalton is the chief executive of the typographical union, you will notice in that testimony that Dalton said that Harlan Palmer always told him that whatever the majority of his employees wanted they could have and that has always been my position [120]

Q. After the strike did you still believe the Guild was out to destroy you?

A. I don't know what the Guild is up to now and the Board, I can't understand it.

Q. I am just asking you about the Guild.

A. They might be, I don't know, they might be.

(Testimony of Harlan G. Palmer.)

The two of them in combination might be still out to destroy me.

Q. Didn't the Guild endeavor to get your subscribers for you after the strike? Didn't they send letters out for you to try to get advertisers and the subscribers back? A. Well——

Q. Is that true or isn't it?

A. Not to my direct knowledge. I only know that Mr. Simonton, one of the Guild members, who had had his vacation prior to the strike, following the strike at the time of the strike settlement, we suggested to all our employees that they all take two weeks vacation and Simonton said that he had had his and that he would put in his time trying to get back the subscribers who had stopped.

Q. Didn't——

A. Our records show very few subscribers who had stopped ever came back but Simonton claimed that he put in two weeks trying to get back subscribers.

Q. Didn't the Guild send out letters to firms which had been boycotted to reinsert their advertising in your paper? [121]

A. No. Following the strike the Guild sent out letters further, condemning the Citizen-News.

Q. Have you got any such letter?

A. I think we can find it.

Trial Examiner Whittemore: Off the record.

(Discussion off the record.)

(Testimony of Harlan G. Palmer.)

Trial Examiner Whittemore: On the record.

Q. (By Mr. Sokol) Can you find that particular letter?

A. No. I think there were several letters of the type I had in mind that followed the strike. Here is one and we will make a further search at the office tonight. Here is one of April 6, 1940, sent out by Tom O'Connor to the Hollywood business people.

Mr. Sokol: I would like to have it marked Board's next in order.

(Thereupon, the document referred to was marked as Board's Exhibit No. 13, for identification.)

May that go into evidence?

Trial Examiner Whittemore: Do you have any objection?

Mr. Sargent: No objection.

Mr. Sokol: I will offer that as Board's Exhibit 13.

Trial Examiner Whittemore: You have no objection?

Mr. Sargent: No. I would like to have it in.

Trial Examiner Whittemore: It will be received.

(Thereupon, the document heretofore marked for identification as Board's Exhibit No. 13, was received in evidence.) [122]

Q. (By Mr. Sokol) Now, do you have the records available about the employees in the display

(Testimony of Harlan G. Palmer.)

and in the classified showing their lineage and et cetera?

A. I have the classified lineage to compare with Mr. Lugoff but I think I will have to have the classified manager come down and explain them. I can't explain them. I have the records brought down but the records themselves I don't believe are sufficiently clear for me to explain.

Q. Well, do you have a summary?

A. No, only of Mr. Lugoff, but here are the records. You can see how they run. In a week there are the number of ads, the number of lines, the commissions earned, and the total commissions, phone room commission.

Q. Let's single out on that letter one, take that for example. This one shows classified advertising department, commission report for Thursday, June 2, 1938; is that right? A. Yes.

Q. Now, it shows that Mr. Lugoff sold 129 ads, a total of 522 lines; is that right? A. Yes.

Q. He was the third highest man out of six people in the department? He was the third highest in the sale of ads and lineage; is that right?

A. Well, let's see what these other figures mean.

Q. I am talking about the outside people, not in the phone room. [123] I mean just the outside salesmen, of the six he was the third, wasn't he, in the sales of that date?

Trial Examiner Whittemore: Well, that document so far hasn't been marked.

(Testimony of Harlan G. Palmer.)

Mr. Sokol: No, I am taking this as an example.

Trial Examiner Whittemore: It doesn't mean much even if he admits it unless you have it marked.

Mr. Sokol: Will you mark this Board's Exhibit 14 for identification, this particular page?

(Thereupon, the document referred to was marked as Board's Exhibit No. 14 for identification.)

Trial Examiner Whittemore: The point is the document is the best evidence and it doesn't need his admission to get it into evidence.

Mr. Sokol: The document we have been talking about, Board's Exhibit 14 for identification, from this exhibit, Lugoff out of the six outside salesmen was third highest in sales and lineage—

Mr. Sargent: I didn't want to interrupt counsel unduly but I do not want to have any statement in the record prejudicial to the respondent unless I know that it is representative of the general record and is not a single date isolated.

Mr. Sokol: I just took it because he happened to open to that page. [124]

Trial Examiner Whittemore: I think the record might show what that document is.

Q. (By Mr. Sokol) What is Board's 14 for identification?

A. The document is a record sheet for the week ending June 2, 1938 of the ads secured and the lineage secured and the commission earned and the

(Testimony of Harlan G. Palmer.)

bonus earned of employees of the classified department.

Q. May I have those to examine? A. Yes.

Q. Then we will have the opportunity to recall you on that if it is necessary.

I would like to have this marked 15 for identification.

(Thereupon, the document referred to was marked as Board's Exhibit No. 15, for identification.)

Q. By Mr. Sokol: This is an editorial which appeared August 1, 1938, upon the settling of the strike? A. Yes.

Mr. Sargent: August what?

Mr. Sokol: 1st.

Q. That was published in your paper?

A. Yes.

Mr. Sokol: I offer this editorial in evidence.

Mr. Sargent: May I take a look at it? I am unfamiliar with it.

Mr. Sokol: Yes. [125]

Mr. Sargent: I have no objection to it. I would be glad to have it go into evidence.

Trial Examiner Whittemore: It is received.

(The document referred to was marked as Board's Exhibit No. 15, and was received in evidence.)

Mr. Sokol: That is all.

(Testimony of Harlan G. Palmer.)

Trial Examiner Whittemore: Before the witness goes on cross examination may I just call your attention, Mr. Sokol, to the fact that there are a number of documents marked for identification which haven't as yet been offered.

Mr. Sokol: Yes, there are several.

Trial Examiner Whittemore: 2, 4, 5, 6, 10, 11, and 13. I suggest you check on that just so we won't get too far away from them.

Mr. Sokol: I will check on those right away.

Trial Examiner Whittemore: Off the record.

(Discussion off the record.)

Trial Examiner Whittemore: On the record.

Mr. Sokol: Mr. Examiner, at this time I will offer Board's 2, which was Mr. Schlichter's employment record.

Trial Examiner Whittemore: Any objection?

Mr. Sargent: No objection.

The Witness: That being the unemployment and old age pension record I think that it should be offered with our permission to substitute a photostatic copy. [126]

Mr. Sokol: Yes, that is understood.

The Witness: Because if an employee would ever want the Government to check back then it would be gone from our records——

Trial Examiner Whittemore: I am sure Mr. Sokol has no objection to that. It will be received.

(Thereupon, the document heretofore marked for identification as Board's Exhibit No. 2, was received in evidence.)

(Testimony of Harlan G. Palmer.)

Mr. Sokol: And I will offer 4, the tear sheet.

Trial Examiner Whittemore: Any objection?

Mr. Sargent: No.

Trial Examiner Whittemore: It is received.

(Thereupon, the document heretofore marked for identification as Board's Exhibit No. 4, was received in evidence.)

Mr. Sokol: The reason it is offered, is that Mr. Palmer testified about it.

I will offer 6A, 6B and 6C. However, this has to be supplemented, Mr. Examiner, with the lineage produced. I will offer that as a document which was prepared at the direction of Mr. Palmer.

The Witness: Yes.

Mr. Sokol: Showing the earnings of Mr. Lugoff during the period. [127]

Trial Examiner Whittemore: You are offering A, B and C?

Mr. Sokol: Yes.

Trial Examiner Whittemore: Any objection?

Mr. Sargent: No.

Trial Examiner Whittemore: It will be received.

(Thereupon, the documents heretofore marked for identification as Board's Exhibits 6A, 6B and 6C, were received in evidence.)

(Testimony of Harlan G. Palmer.)

BOARD EXHIBIT 6-A

LUGOFF EARNINGS 1938

Week ending

Jan	6	\$25.50
	13	32.50
	20	32.77
	27	31.50
Feb	3	32.18
	10	33.00
	17	35.76
	24	34.14
Mar	3	32.07
	10	31.85
	17	32.53
	24	31.96
	31	25.83
Apr	7	22.43
	14	22.13
	21	19.74
	28	20.10
May	5	20.49
	12	20.72
	19	19.67
	26	20.15
June	2	19.07
	9	18.00
	16	19.21
	23	19.91
	30	20.83
July	7	19.56
	14	17.44
	21	16.51
	28	15.73
Aug	4	Vacation
	11	“ Discharged, reinstated
	18	18.79
	25	13.94

(Testimony of Harlan G. Palmer.)

Week ending		
Sep	1	\$18.34
	8	18.92
	15	19.12
	22	19.28
	29	20.95
Oct	6	22.75
	13	23.41
	20	24.16
	27	24.98
Nov	3	24.01
	10	23.33
	17	25.96
	24	37.80
Dec	1	24.67
	8	23.52
	15	22.73
	22	23.24
	29	25.19
<hr/>		
Total		1198.37

BOARD EXHIBIT 6-B

LUGOFF EARNINGS 1939

Week ending	Paid	Earned
Jan	5	\$20.43
	12	20.94
	19	23.01
	26	23.22
Feb	2	24.33
	9	22.00
	16	23.11
	23	23.06
Mar	2	21.86
	9	23.52
	16	23.79
	23	23.03
	30	22.60

(Testimony of Harlan G. Palmer.)

Week ending		Paid	Earned		
April	6	\$21.87			
	13	23.06			
	20	25.36			
	27	24.25			
May	4	24.64			
	11	24.32			
	18	24.78			
	25	23.11			
June	1	22.32			
	8	Vacation			
	15	"			
	22	19.29			
July	29	19.68			
	6	24.00	\$18.94	Min. guarantee \$24. wk. in	
				effect at this time	
	13	24	19.26		
Aug	20	24	20.90		
	27	24.11	24.11		
	3	24	23.41		
	10	24.50	24.50		
Sept	17	24	19.26		
	24	24	20.08		
	31	24	20.45		
	7	24	20.82		
Oct	14	24	19.96		
	21	24	19.05		
	28	24	18.30		
	5	24	19.98		
Nov	12	24	20.56		
	19	24	19.72		
	26	24	21.33		
	2	24	21.09		
Dec	9	24	22.12		
	16	24	22.55		
	23	26.54	26.54		
	30	24	22.45		
Total	7	24	20.79		
	14	24	21.28		
	21	24	20.59		
	28	24	18.69		
Total		1174.73	546.73		

(Testimony of Harlan G. Palmer.)

BOARD EXHIBIT 6-C**LUGOFF EARNINGS 1940**

Week ending	Paid	Earned
Jan 4	\$24.00	\$18.77
11	24	20.34
18	24	18.64
25	24	20.13
Feb 1	24	19.97
8	24	19.65
15	24	20.65
22	24	19.26
29	24	18.84
March 7	24	19.20
14	24	18.52
21	24	20.10
28	24	22.30
Total	312.00	256.37

Trial Examiner Whittemore: How about 5, Mr. Lugoff's employment record?

Mr. Sokol: I will offer that.

Mr. Sargent: No objection.

Trial Examiner Whittemore: It is received.

(Thereupon, the document heretofore marked for identification as Board's Exhibit No. 5, was received in evidence.) [128]

(Testimony of Harlan G. Palmer.)

BOARD EXHIBIT 5

The Citizen-News Company

Form G-76

Date Employed Jan 10, 1930
over

EMPLOYEE RECORD

Personnel Department

Name—Lugoff, Leonard Seymour

Social Sec. No.—562-01-1040

Address—330 5th Ave, Venice

Address—355B Vernon Street, Venice

Address—551 Vernon Street, Venice

Address—1316 Riviera, Venice

Address—1314 Riviera, Venice

Address—256 Horizon, Venice

Address—1149 N Genessee

Position—Salary—Promotions

Date: Jan. 1, 1937:

Department: Classified

Manager: Tobin

Position: Salesman

Wages and Salary: \$10.00-comm.

Date: July 1, 1939:

Department: Classified

Manager: Tobin

Position: Salesman

Wages and Salary: Minimum \$24.00

(Testimony of Harlan G. Palmer.)

Date of Birth—December 9, 1896

Date Becomes 65—December 9, 1961

Male—X

Married—X

Rent—X

No. of Children—1

Notify: Miriam Lugoff; relationship: wife in case
of accident

Home Address—Same

Phone No.—Same

Date Leaving Employment—3/30/40

Discharged—X

Remarks—Low production

March 29, 1930

Off 9/13/30

Retd. Nov. 14, 1931

Off Sept. 17, 1932

Jan. 13, 1934—Circ Dept.

Aug. 1934—Class Dept.

.....
Signature

A. Not at this time, no.

Q. How many would you say?

A. I don't know as any of them that are in the
plant at the present time are out to destroy me. I
wouldn't designate one as being out for that pur-
pose.

(Testimony of Harlan G. Palmer.)

Q. Have you got rid of all of them who were out to destroy you?

A. Well, at the time of the strike and after the strike I believe that they were all out to destroy me, not any particular one, but the Guild itself. The Guild includes not only the members in our organization but the members on other newspapers in this area.

Mr. Sokol: That is all.

Mr. Sargent: No questions.

(Witness excused)

Mr. Sokol: Is Mr. Sternberg here?

Mr. Palmer: Mr. Sternberg was downtown this noon and it was impossible for Mr. Thompson to get him.

Mr. Sokol: Mr. Lugoff, will you take the stand?

LEONARD LUGOFF,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Sokol) State your name. [142]

A. Leonard Lugoff.

Q. And your address?

A. 420 East 111th Place.

Q. Los Angeles?

A. Los Angeles.

(Testimony of Leonard Lugoff.)

Mr. Sokol: May this be off the record?

Trial Examiner Whittemore: Yes. Off the record.

(Discussion off the record.)

Trial Examiner Whittemore: On the record.

Q. By Mr. Sokol: There has been reference made here to the Hollywood News. Did you work for that paper? A. Yes.

Q. That was the paper that eventually merged with the Citizen? A. That is right.

Q. When did you go to work for that paper?

A. The Hollywood News?

Q. Yes.

A. Well, I first went to work for the Hollywood News in 1928.

Q. Was the Citizen then in existence at that time? A. Yes, it was.

Q. Had you worked for the Citizen prior to that time? A. Yes, I did.

Q. When did you work for the Citizen? [143]

A. I worked for the Citizen from 1926 to 1928.

Q. In what capacity?

A. Classified.

Q. Selling advertising, classified advertising?

A. Selling classified advertising.

Q. Were you on the inside or the outside?

A. Outside.

Q. What were you earning? Did you have a guarantee in 1926?

(Testimony of Leonard Lugoff.)

A. With the Citizen News I started with the guarantee of \$30.

Q. A week?

A. A week. It was later raised to \$35 with 20 percent commission as a basis of pay all the way through.

Mr. Sargent: Was that the Citizen News?

The Witness: That is the Citizen.

Mr. Sargent: The Citizen, excuse me.

Q. (By Mr. Sokol) What was your commission? A. 20 per cent commission.

Q. And if it reached over the guarantee you got that money?

A. I got that if it were less, and I still got my \$30 or \$35.

Q. Did you always make your guarantee?

A. Very seldom.

Q. You worked there two years at that time. Can you approximate the time when you made your guarantee? [144]

A. Oh, out of those two years I would say two or three months at the most.

Q. Did *you* a commission per line at that time?

A. No, it was based on——

Q. 20 per cent? A. 20 per cent.

Q. Then in 1928 you went to the News?

A. That is right.

Q. Was it at the same rate or a higher rate?

A. A higher rate.

Q. Doing the same kind of work?

(Testimony of Leonard Lugoff.)

A. Doing the same kind of work.

Q. When did you return to the Citizen?

A. Well, I returned when there was a merger between the Citizen News—between the Citizen and the News in 1931.

Q. Had you been working in the intervening period for the News?

A. Yes, I was working for the News when the merger took place.

Q. Now, after the merger, did you remain in constant employment up to the time you were finally discharged?

A. I worked for the Citizen News for a 25 per cent commission for about a year.

Q. Then what happened then?

A. I left the employment of the Citizen News.

[145]

Q. Did you quit voluntarily?

A. I quit voluntarily.

Q. When did you return to the paper?

A. 1934.

Q. At that time what did you do?

A. I was in the circulation department, solociting circulation.

Q. How long did you do that?

A. Six months.

Q. After that what did you do?

A. I went into the classified department.

Q. Selling ads?

(Testimony of Leonard Lugoff.)

A. Classified advertising.

Q. . You were an outside man again?

A. Outside man.

Q. What commission?

A. 25 per cent commission.

Q. Did you continue at that rate for any period of time?

A. I continued on the rate of 25 per cent for about six months and then asked to be taken off of it and put on a similar rate like the other people on the outside were employed.

Q. What was that rate?

A. Well, the rate differed with the different employees but I wanted mine to be approximately the same as 25 per cent commission that I was getting. [146]

Q. What was the rate that you went on?

A. Mr. Tobin put me on \$10 base pay, a cent and a half a line, and a cent an ad.

Q. Will you explain that, the base pay? What does that mean?

A. Well, that was the amount of money that they started with, in other words, I got \$10 and then the number of lines that I ran, they figured out, multiplied it by a cent and a half and the number of ads per week by a cent, and added \$10 on it. In other words, \$10 plus a commission.

Mr. Sargent: May I have that answer again?

(Record read by the reporter.)

(Testimony of Leonard Lugoff.)

Mr. Sokol: May we go off the record for a minute?

Trial Examiner Whittemore: Yes. Off the record.

(Discussion off the record.)

Trial Examiner Whittemore: On the record.

Q. (By Mr. Sokol) Did you continue on that rate or was it changed?

A. Well, I protested that rate about a week or so after I got it and the only change Tobin would make would be if I reached a thousand lines a week, that he would raise the pay per line to 2 cents instead of 1½ cents.

Q. What territory did you have?

A. I covered everything from Western Avenue, the west side of Western Avenue, to Highland Avenue north and south. [147]

Q. Did you continue on that territory up to your final discharge?

A. Up to 1940, yes, sir.

Q. Was your employment steady after that?

A. The employment was steady after that.

Q. In 1937 were you party to the formation of any committee for collective bargaining?

A. The classified at that time. At that time the classified went enmasse into Young's office to hear what he had to say about forming a committee.

Q. Were they requested to do that?

A. They were requested to do that.

Q. Who requested that?

(Testimony of Leonard Lugoff.)

A. There was a notice sent out that we should get together with Mr. Young.

Q. Was that notice from the management?

A. From Mr. Young, yes, from the management.

Q. What occurred?

A. We discussed different raises, car allowance, different things that the phone room thought was necessary, and what the outside thought was necessary.

Q. There was a discussion of wages, hours, and working conditions? A. Yes.

Q. Was the Guild attempting to organize in the department at [148] that time?

A. No, the Guild was not attempting to organize.

Q. Were they organized in the editorial department?

A. They were organized in the editorial department.

Q. How about Mrs. Brichoux?

A. Mrs. Brichoux was very much interested in the Guild.

Q. Will you spell that name?

A. B-r-i-c-h-o-u-x.

Q. Did she work in your department?

A. She worked in my department.

Q. I mean do you know if there was any attempt to organize your department at that time?

A. There was an attempt by Mrs. Brichoux to get other members, classified members, to join the Guild.

(Testimony of Leonard Lugoff.)

Q. Do you know if any agreement was signed between this committee and the management for your department?

A. The management wanted to sign an agreement for a year but Mrs. Brichoux advised against it because she wanted the Guild to act as the bargaining agent.

Q. Was any contract signed with the Guild?

A. No contract was signed.

Q. When did you join the Guild?

A. October 1, 1937.

Mr. Sargent: 1937, was that?

The Witness: That is right. [149]

Q. By Mr. Sokol: You know if the Guild was then attempting to negotiate a contract for the editorial department?

A. Yes, they were.

Q. A strike took place in May, 1938, do you recall that?

A. Yes.

Q. Did you go out on strike?

A. No, I didn't.

Q. Were you asked to turn in your card?

A. Yes, I was.

Q. In the Guild?

A. Yes.

Q. During that strike period what was the effect on your lineage?

A. My lineage took a very decided drop.

Q. In August did you have a vacation at any time?

A. Two weeks prior to my discharge I had a vacation.

(Testimony of Leonard Lugoff.)

Q. Did you have any conversation with Mr. Tobin before going on your vacation?

A. I took up with Mr. Tobin my low production, telling him that I was contemplating a loan of \$300 and that if there was any doubt about keeping me on account of that low production, I wouldn't go through with the loan and he told me at the time to go ahead and get the loan. There was nothing to worry about.

Q. How long were you away on your vacation?

[150]

A. Two weeks.

Q. When you returned did Tobin speak to you concerning your employment?

A. He didn't say anything until the latter part of the week, then he informed me that he had to let me go.

Q. What did he say?

A. He said that the strikers were coming back and they had to cut expenses and they decided to let me go.

Mr. Sargent: I didn't hear that.

Trial Examiner Whittemore: Read the answer.

(Record read by the reporter.)

Q. (By Mr. Sokol) Did you tell Mr. Tobin about what he said previously about your security?

A. Yes, I told him that and he said——

Q. What did you tell him?

A. I told him that here I went out and got a loan and I was in debt now with no work contem-

(Testimony of Leonard Lugoff.)

plated or I didn't know where I was going to get another job and I told him I didn't think it was right.

Q. What did he say?

A. He said "If you want to go above my head and see Mr. Young or Mr. Palmer, it is agreeable with me."

Q. What did you say then?

A. Well, that took place on a Friday. Over the week end I went home and thought about it and on Monday morning I came [151] in to see Tobin and tell him I was going up to see Mr. Palmer.

Q. Was that August 22nd?

A. That was Monday, August 22nd.

Q. You saw Mr. Palmer then?

A. Mr. Tobin happened to be away on his vacation and I went right up to Mr. Palmer's office.

Q. You didn't see Mr. Tobin?

A. No, Mr. Tobin was on his vacation. He started that Monday.

Q. State your conversation with Mr. Palmer.

A. Well, I came into Mr. Palmer's office and Mr. Young and Mr. Palmer were seated there. I told Mr. Palmer that I wanted to speak to him about my discharge last Friday and he said for me to go right ahead and tell him all about it.

So I told him that I had been employed in classified for the past five years, that up to the time of the strike my production warranted my employment. I was bringing in enough business to more

(Testimony of Leonard Lugoff.)

than pay for my employment, and during the strike the three months, May until August, that my production in advertising had dropped considerable. I told him that I was a member of the Guild before the strike and gave up my membership card at the time of the strike.

I told him that I took up with Tobin before going on my vacation two weeks previously about my low production, telling [152] him about the contemplated loan and getting Tobin's O. K. that it was all right to go ahead. I told him that now that I had a \$300 debt on my shoulders and no job that I knew that Mr. Palmer himself was not legally responsible but the debt would nevertheless have to be paid and it would never have been incurred if Tobin hadn't told me that my job was O. K. And I left it at that. That is——

Q. What did he say?

A. He thought a minute and he said, "Do you want us to pay that \$300 or do you want your job back?"

Q. What did you say?

A. I said naturally I had to work. Well, he said, "Lugoff, you go downstairs and wait an hour and Mr. Young and I will talk it over."

Q. Did he at any time tell you that you could come back on the same conditions that the five people who had been discharged immediately prior to the strike and who were coming back under the strike settlement agreement?

(Testimony of Leonard Lugoff.)

A. Mr. Palmer said nothing to me but "Do you want your job back or do you want us to take over the \$300 loan."

Q. Did you ever mention the strike settlement agreement to him at that time?

A. I don't recollect mentioning any strike settlement agreement.

Q. Did he say anything about the strike settlement agreement? [153]

A. Not to me.

Q. Then you went downstairs. What was the next thing that happened?

A. I waited a half an hour and Mr. Young came and handed me a slip of paper with the stipulations by which I was rehired back.

Q. Did he say anything to you at that time that you were to remain in the employee of the company until the Board ruled on the strike settlement agreement—I will reframe that. Did he say anything to you about when your employment was to terminate?

A. The stipulations in the written notice were very exact. He stated that I was on probation for four months until January 1, 1939.

Q. Did he say anything to you about the fact that you would be discharged if the Board held adversely to the people who had filed a charge before the Board?

A. No, there was no statement about the strike settlement agreement at all.

Mr. Sokol: Will you mark this for identification, Mr. Reporter?

(Thereupon, the document referred to was marked as Board's Exhibit No. 16, for identification.)

Q. (By Mr. Sokol) Did he give the statement to you in writing of the conditions under which you were to be reemployed? [154]

A. He did.

Mr. Sargent: Will you read the last question and answer?

(The question and answer were read.)

Q. (By Mr. Sokol) I show you Board's Exhibit 16 for identification. Is that the original statement you got? A. Yes.

Mr. Sokol: I offer it in evidence.

Trial Examiner Whittemore: Any objection?

Mr. Sargent: No objection.

Trial Examiner Whittemore: It is received.

(Thereupon, the document heretofore marked for identification as Board's Exhibit No. 16, was received in evidence.)

(Testimony of Leonard Lugoff.)

BOARD EXHIBIT 16
INTER-OFFICE MEMO
Hollywood Citizen-News

August 22, 1938.

To: Mr. Lugoff

Subject:

You will be retained in your present position, with final decision to be made on January 1, 1939. The intervening period will be probationary.

T. H. YOUNG

Business Manager.

Mr. Sargent: Did you ask him who gave him that?

The Witness: The business manager, Mr. Young.

Q. (By Mr. Sokol) Was Mr. Palmer present?

A. No.

Q. Have you given us all the conversation?

A. Yes.

Q. Are you positive that you were not told that your employment would terminate if the Board found against these people who had charges pending? A. Positive.

Mr. Sokol: That has been received? [155]

Trial Examiner Whittemore: Yes.

Q. (By Mr. Sokol) Now, referring to Board's 16, it is very brief, it says: "You will be retained in your present position with final decision to be

(Testimony of Leonard Lugoff.)

made on January 1, 1939. The intervening period will be probationary. T. H. Young, business manager, dated August 22, 1938."

With respect to this was there any determination made on January 1, 1939 of your position?

A. There was nothing said and I didn't bring it up.

Q. Did you ever receive any complaints about your production after August 22, 1938?

A. No.

Q. Did you receive any notice of any kind on January 1, 1939?

A. No.

Q. Or thereafter?

A. No.

Q. You did receive a letter discharging you, however, did you?

A. A year and a half after.

Q. In the meantime you had given up your Guild membership for awhile, had you?

A. That is right.

Q. Did you rejoin the Guild?

A. I rejoined the Guild in February, 1939. [156]

Q. Let me ask you this: After you were reinstated in August, 1938, you worked under Tobin again?

A. Yes.

Q. And in your old job?

A. The same position.

Q. After you came back to work, did you ever have any conversation with Tobin about union activities?

A. Tobin made a statement the first week he

(Testimony of Leonard Lugoff.)

came back from his vacation, he said, "I suppose you have rejoined the Guild?"

And I told him, "no." And a week later he asked the same question.

And I said, "Tobin, the only time that I will rejoin the Guild is when classified gets organized and I can figure out a way that I am going to be benefited directly by it, and that is only when classified is organized."

Q. Then you did rejoin the Guild in February, 1939? A. That is right.

Q. Were there any other people who were members of the Guild at that time?

A. In classified?

Q. Yes. A. Helen Brichoux.

Q. After you rejoined the Guild, did you make any effort to get others to join? [157]

A. Yes, I did. In May, 1939, I went around with a petition telling the different——

Mr. Sargent: I object to this as nonresponsive.

Q. (By Mr. Sokol) What did you do in May, 1939?

Trial Examiner Whittemore: He said he went around with a petition. Go ahead and finish your statement.

The Witness: I don't remember the question now.

Trial Examiner Whittemore: All right. Read it. (Question read by the reporter.)

(Testimony of Leonard Lugoff.)

The Witness: Telling different members in classified that they could get the Guild to bargain for them without becoming members of the Guild providing we got a majority in classified to sign a petition.

Mr. Sargent: I ask that go out unless it was known to the management that such was the case. What he did without the knowledge of the management is not material.

Trial Examiner Whittemore: Well, I will deny the motion at the moment. You may, however, renew it later after we have found out where the petition was taken and to whom it was presented and when it was taken and so forth.

Q. (Mr. Sokol) What is this document?

A. (Examining document) That was the last petition I made.

Q. Did you get any people to sign that first petition?

A. The first petition I got three people besides myself, there were four names on it. [158]

Q. Were all those people in your department?

A. All in the department. At that time the majority that I needed was only three more names and I would have a majority.

Q. By the way, how did you go about circulating that petition? Was that right in the plant?

A. Yes.

Q. Is Tobin around in the department all the time?

A. Most of the time.

(Testimony of Leonard Lugoff.)

Q. Was Tobin present at any time when you were doing this?

A. Well, he came in during—for instance, he came in during the noon hour while I was speaking, talking privately to one or two of the employees in classified.

Trial Examiner Whittemore: Suppose you speak up so everybody can hear you.

Q. (By Mr. Sokol) Did the petition authorize the Newspaper Guild to represent the people?

A. Yes, it did.

Q. After you passed that out and you didn't get the majority to sign it, did you take any step with respect to getting better conditions for your department?

A. Well, I made an appointment with Mr. Young telling him that I wanted to talk to him about a condition that I thought should be corrected in classified and the day I had an appointment with him I took a Mr. Allen along with me, as moral support, figuring that two heads would carry a little [159] more weight than one.

Q. Let me ask you this: When you got your job back from Mr. Young, in your conversation with Mr. Palmer before getting the job back, did you mention anything about your having been a member of the Guild?

A. Yes, I did. I think that is in the testimony now. I told him that I was a member of the Guild before the strike but gave up my card at the strike.

(Testimony of Leonard Lugoff.)

Q. Did you say anything to Mr. Young about that?

A. Young was present—you mean at the time I spoke to Palmer?

Q. Yes.

A. Young was present during my conversation with Palmer.

Q. On this occasion when you went to see Mr. Young with Mr. Allen, what was the conversation about?

Trial Examiner Whittemore: Who is Allen, first?

Q. (By Mr. Sokol) Who is he?

A. Mr. Allen is one of my co-workers in classified, one of the salesmen.

I told Mr. Young that the outside wasn't getting any guaranteed living wage, that at any time that there was a depression or some condition arose that was out of the control of the outside men, that our wages went down and there was—and that the firm I thought was morally responsible to see that everybody that it employed got a living guaranteed wage [160] and that dissatisfaction led to the growth and in the establishment of unions and guilds. And Mr. Allen also told him something about in the same line.

And he said, "Well, you boys go out and write your reasons up and hand them in and we will see what we can do about it."

(Testimony of Leonard Lugoff.)

Q. What did you hand in?

A. Well, I wrote the same reasons that I had given Mr. Young.

Q. Did you ask for anything specific?

A. There was nothing specific. The only thing specific I asked for was a guaranteed living wage.

Q. Did you ask for any specific amount?

A. No, no specific amount.

Q. When was this meeting?

A. This meeting was the last week in June, 1939.

Q. Then did you receive the guarantee of \$24 a week?

A. Everybody got a guarantee of \$24 a week starting the 1st of July.

Q. Did Mr. Young say to you at that time that you had no right to a guarantee of \$24 because just the previous week you had only made \$19?

A. Nothing was said about it. There was no specific amount asked, nothing was said about that. No comparison was made with wages that were made the week previous or [161] two weeks previously.

Q. After your guarantee went into effect, did you ever make it?

A. Out of the 38 weeks approximately that I was employed after the guarantee went into effect, I think I made it twice.

Q. According to these figures here in Board's 6A, B and C, I don't see where you made it at all. Will you look at those?

(Testimony of Leonard Lugoff.)

A. I should have made it Thanksgiving week.

Q. You are right. Yes, that is right, pardon me. You made it July 27th.

A. That was when I was taking over somebody else's territory along with my own.

Q. And the week ending August 10th you made it.

A. And I made it the week ending November 23rd.

Q. That is correct. That should be 36.

Trial Examiner Whittemore: Speak up.

The Witness: One of these figures right off hand I would say wasn't correct.

Q. (By Mr. Sokol) So far as you know, you only made your guarantee two or three weeks?

A. Yes, so far as I know I only made it two or three weeks.

Q. Did you ever get any reprimand for not?

A. No.

Q. While we are on the subject of guarantee, at that time [162] you were guaranteed \$24 a week. How much did you make per ad?

A. Well, it was the same basis, that I was paid a cent and a half a line and a cent an ad and \$10 base pay.

Q. You know of people with less seniority than you doing the same type of work and getting more than a cent an ad and a cent and a half a line?

A. Yes, I was the lowest paid man in classified, that is, on the outside.

(Testimony of Leonard Lugoff.)

Q. Do you know what your production was, however? A. Yes.

Q. With respect to your production of lineage, where did you stand?

A. I was the second high on the outside——

Mr. Sargent: Wait a minute. I object to that unless he also tells us first his production as compared with the total production.

Trial Examiner Whittemore: Well, you want to lay more ground work for this. This is asking him more or less for a conclusion. If there are records available I would suggest they would be the best evidence.

Q. (By Mr. Sokol) Did you ever see any records of the lineage? A. Yes, I did.

Q. Where did you see it [163]

A. The records of lineage were available on Mr. Tobin's desk at all times.

Q. Were they available to you? A. Yes.

Q. Did you see the lineage for the month of March, 1940? A. Yes.

Mr. Sokol: Will you mark this Board's Exhibit 17 for identification?

(Thereupon, the document referred to was marked as Board's Exhibit No. 17, for identification.)

Mr. Sargent: May I see that?

I object to the introduction of this document unless the proper foundation is laid. I object to it now.

(Testimony of Leonard Lugoff.)

Q. (By Mr. Sokol) Where did you see the figures for lineage which are listed on Board's 17 for identification?

Mr. Sargent: He didn't say he did see them.

Q. (By Mr. Sokol) Did you ever see those figures? A. Yes.

Q. Where did you see them?

A. They were computed from Tobin's records for the ads and lineage report for the month of March.

Mr. Sargent: I object to his saying "computed" unless they are the exact figures and he can show how they got from the original on Mr. Tobin's desk to this particular exhibit.

Mr. Sokol: This is not an original, this is just a [164] carbon.

Trial Examiner Whittemore: What is the document?

Q. (By Mr. Sokol) What is this document?

A. It is the production record in ads and lines of the outside sales people in classified.

Q. Did you get that up yourself? A. No.

Q. Can you tell us what your production and lineage was in 1940, in March of 1940?

Mr. Sargent: That is of your own knowledge. I object to it being taken off of this document.

Q. (By Mr. Sokol) Well, will this refresh your recollection?

A. I kept an accurate, a fairly accurate check of my lineage all the time I was there.

Q. Is that an accurate reflection of it?

(Testimony of Leonard Lugoff.)

A. Yes.

Q. What was your lineage?

Mr. Sargent: Just a minute. I have no objection to his giving it either from his own memory or from any properly qualified document but this document——

Mr. Sokol: Your records are the best so I will withdraw that. We would like to have your records.

Mr. Sargent: We told you we would give you them.

Mr. Sokol: Well, I will let it go until tomorrow morning and then we can get the total lineage. May this be [165] off the record?

Trial Examiner Whittemore: Yes, off the record.
(Discussion off the record.)

Trial Examiner Whittemore: On the record.

Q. (By Mr. Sokol) I show you here the records of the company for the week ending March 7, 1940. Now, is that correct that you produced 120 ads, 533 lines? A. That is correct.

Mr. Sargent: 120 ads?

Mr. Sokol: 120 ads and 533 lines.

Mr. Sargent: Thank you.

Q. (By Mr. Sokol) This report here for the week ending March 7, 1940, first it says, "Salesmen." Does that mean outside salesmen?

A. They are all outside salesmen. That also includes the manager, Mr. Tobin.

Q. Now, the phone room, that is a separate department? A. That is a separate end.

(Testimony of Leonard Lugoff.)

Q. What do they do? Get ads off the phone?

A. Yes.

Q. Then there is "Voluntary."

A. The ads that come in without the phone room or salesmen going after them.

Mr. Sokol: I will offer that as Board's next in order.

Trial Examiner Whittemore: Is that the one that you [166] had marked 17 for identification?

Mr. Sokol: These are all new documents. I should have had that marked. I am going to offer at this time the company's reports on lineage in March by these outside salesmen as Board's 18A, B, and C and D for those four weeks.

Mr. Sargent: Your Honor, I have no objection to their being admitted but before any weight is given to them I would like to have the company through its appropriate officers explain what is meant by them. I see certain figures there but I have never had them explained to me and I am sure your Honor would like to have them explained to you.

Trial Examiner Whittemore: Yes, of course.

You have no objection to their being entered in evidence?

Mr. Sargent: No.

Trial Examiner Whittemore: They may be received.

(The documents referred to were marked as Board's Exhibits Nos. 18A, B, C and D, and were received in evidence.)

BOARD Exhibit 18-A

CLASSIFIED ADVERTISING DEPT. COMMISSION REPORT

WEEK ENDING March 7 19 40

SALESMEN

NAME	CASH ADS	SALARY	ADS	LINES	COMM.	BONUS	Total Comm.
J. M. Reid			233	2190	W.D. 2.10		37.28
P. W. Allen			82	350		OS. -.05	(7.77) 11.50
M. Mc Keller			43	254			(5.51) 14.00
L. S. Lugoff			120	533	.30	OS. -.30	(9.22) 14.00
J. Starling			11	48			
J. R. Jofin			38	267			
NATIONAL LABOR RELATIONS BOARD							
CASE NO. <u>SA-C-374</u> EXHIBIT NO. <u>18-A</u>							
IN THE MATTER OF <u>City News</u>							
DATE <u>11/14/40</u> BY <u>Lugoff</u>							
DANIEL W. ROSS, OFFICIAL REPORTER							
BY <u>Van Hise</u>							

PHONE ROOM

F. Vessels	.80	467	1163	.20	OS. -.10	18.61
F. Whitebrook	1.05	454	1069		OS. -.10	17.05
E. Lovell	.60	281	814		OS. -.25 DH. -.15	(10.63) 14.00
F. Davis	.30	339	1123	.40	OS. -.30	15.59
M. Speer	2.00	430	991		OS. -.50 PH. -.50	15.20

VOLUNTARY

J. Johnson				.43	OS. -.05	.38
H. Brichow				.75	OS. -.10 DH. -.20	.45
L. Weiss				.04		.04
M. Schreiber	<u>Sales</u> 22.44			5.61	<u>Subscribed</u> 5.61	5.61

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BOARD EXHIBIT 18-B

CLASSIFIED ADVERTISING DEPT. COMMISSION REPORT

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18.0

WEEK ENDING March 14 19 40

SALESMEN

NAME	CASH ADS	SALARY	ADS	LINES	COMM.	BONUS	Total Comm.
C. M. Reid			239	2037	N.D. 2.40		35.35
P. W. Allen			85	393			(8.71) 11.50
M. McKellar			47	531			(11.02) 14.00
L. S. Lugoff			129	525	N.D. .30	O.S. - .95	(8.52) 14.00
J. S. Starling			15	51			
J. R. J. Lin			46	273			
NATIONAL LABOR RELATIONS BOARD CASE NO. <u>10-107</u> BOARD <u>X</u> EXHIBIT NO. <u>18-B</u> IN THE MATTER OF <u>City of New York</u> <u>11/14/40</u> WITNESSES <u>Lugoff</u> DANIEL W. ROSS, OFFICIAL REPORTER BY <u>Van V. Ruy</u>							

PHONE ROOM

J. Vessels	1.40		434	982	N.D. .20	O.S. -.20	15.89
J. Whitcomb	1.45		408	1018		O.S. -.30 P.H. -.15	15.64
E. Powell	.75		288	817		O.S. -.05	(11.28) 14.00
J. Davis	.40		300	981	N.D. .40	O.S. -.30	12.97
M. S. Speer	1.00		439	1044		O.S. -.10	15.53

VOLUNTARY

J. Johnson	.10				.62	O.S. -.05	.67
H. Britton					.84	O.S. -.15	.69
A. Weiss	.05				.10		.15

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WEEK ENDING March 21 19 40

SALESMEN

116					
334	NATIONAL LABOR RELATIONS BOARD				
CASE NO. C-1399	EXHIBIT NO. 18C				
11/4/40	Citizen News				
	Ziegoff				
	Van Fleet				

2. 11. 1911 72, 3 1/2

[illegible]

1891

Johnson	.05				.59	1.1	.64
4. P. King	.05				1.76		1.81
Johnson	.10				.10	1	.20

210
180

WEEK ENDING March 28 1940

Form CL-37

2015

NATIONAL LABOR RELATIONS BOARD

CASE NO. ~~XX~~ *1009* BOARD OF CONTRACT EMPLOYEES EXAMINER NO. *18A*

IN THE MATTER OF *City of Las Vegas*

GATE *1/14/40* WORKERS *Lugoff*

BY *Van Dyke* SECRETARY

DANIEL W. LEWIS, OF FREDERICK PORTER
BY *Van Vleet* CLERK

05. - .05	15.67
05. - .15	19.69
05. - .05	(10.67) 14.00
05. - .55	12.61
05. - .55	15.09

05. - .10	
05. - .15	.60
4.15 deducted	.76

E. Johnson					.70	03. - .10	.60
H. Buchholz					.91	05. - .15 11.15 d. Anted	.76
L. Weiss	.05						.05

(Testimony of Leonard Lugoff.)

Q. (By Mr. Sokol) Referring to Board's 18A, from what I can observe——

Mr. Sargent: 18A or 17A?

Mr. Sokol: 18A.

Q. From what I can observe, you were the second highest man in the production of ads, is that right? A. Ads and lines. [167]

Q. Do you know how these other men were paid——

Mr. Sargent: I ask that be stricken on the ground we don't know whether the same basis was used for Lugoff, the witness, and the other people, and until the records are explained we don't know what they mean.

Trial Examiner Whittemore: This is the witness' interpretation of those records. When Mr. Tobin or Mr. Young or whomever you are trying to call comes he can give his explanation. This witness has worked in the department for some time and I assume that he knows the basis for these records.

Mr. Sargent: He hasn't been qualified as to these records.

Trial Examiner Whittemore: Well, he is looking at them now.

Q. (By Mr. Sokol) Let me ask you this: What is the rate for classified ads in the paper?

A. The rate fluctuates from a contract rate of 16 cents a line daily, 23 cents on Wednesday, which includes your Advertiser, on up until I think, if I remember correctly the one time rate is 30 cents.

(Testimony of Leonard Lugoff.)

Q. Now, this record here does not reflect what income you brought into the paper through the sales of these ads? A. Yes, it does.

Q. How does it show that?

A. Well, it reflects the lineage, it is the advertising [168] brought in. It doesn't reflect what rates they paid for it, no.

Q. Now, do you know how Starling was paid?

A. I imagine Starling is the only one I don't know how he is paid there.

Mr. Sargent: I object to testimony based on imagination.

Trial Examiner Whittemore: Yes.

Q. (By Mr. Sokol) Do you know how McKellar was paid?

A. McKellar was paid \$10 base pay and 2 cents a line.

Q. And he got the \$24 guarantee too?

A. It is a woman. Yes.

Q. Do you know if she ever made her guarantee? A. That I don't know.

Q. Was she a member of the Guild?

A. No.

Q. How about Allen, how was he paid?

A. Allen got \$12 base pay and 2 cents a line commission and a cent an ad. Marjory McKellar got a cent an ad too.

Q. Was he a member of the Guild?

A. No, he wasn't.

(Testimony of Leonard Lugoff.)

Q. How about Reid, how was he paid?

A. \$15 base pay and a cent and a half a line and a cent an ad.

Q. Is he a member of the Guild? A. No.

[169]

Q. Toward the end of March, 1940, was your lineage increasing or decreasing?

A. My lineage increased steadily from December on until March, 1940.

Q. Are there fluctuations in the period of a year? A. Yes, there is.

Q. What is that caused by?

A. Why, it is usually periodical. It is caused by Christmas, during your Christmas season classified as a rule falls down. During the summer people go away on a vacation and your classified lineage shows the depression too.

Q. Could you account for your production not being high by reason of your sleeping on the job? Did you ever do that? A. No, sir.

Q. Do you remember this occasion when Mr. Palmer came by? A. No, I don't.

Q. When he came by your car?

A. No. That is entirely news to me.

Q. Were you ever sleeping in his presence?

A. No, not that I am aware of.

Q. Or dozing? A. No.

Trial Examiner Whittemore: That raises the question if the man were asleep how he would know if Mr. Palmer was around. [170]

(Testimony of Leonard Lugoff.)

Q. (By Mr. Sokol) Did you receive any complaints from Tobin about your decline in production?

A. Around—the decline in production you mean around my first firing? In 1938?

Q. No, thereafter.

A. No. There was no decline in production apparently that I know of during that year and a half that I was employed before my firing.

Q. Can you explain what the practice was in the classified advertising department in your paper and other papers; that is, did an employee have to make his guarantee in order to be retained?

A. Well, on the Citizen News the basis of figuring sales cost was on a 25 percent basis; that is, if your sales cost was around 25 percent, they figured that was a fair cost and brought them a fair return on your endeavor.

Q. Were you told that by the management?

A. I was not directly told that but I was hired three different times on a 25 percent commission.

Q. If you were making 25 percent commission at the time of your discharge would you have made your guarantee? A. No.

Q. What?

A. No. I wouldn't have made it. I was making around 25 percent at the time of my discharge and I wasn't making my [171] guarantee.

Q. Previously when you had been on a 25 percent basis, had you ever made your guarantee? You

(Testimony of Leonard Lugoff.)

remember you testified that you had been on a guarantee with the Citizen for awhile previously?

A. There was no guarantee in effect.

Q. That was the News, was it, where the guarantee was, a \$35 a week guarantee?

A. I beg your pardon. You mean back in '26 and '27?

Q. Yes.

A. No, as I stated then, about two or three months out of the two years I was employed, that there was only two or three months that I made over and above my guarantee.

Q. Well, is that common in the business?

A. Yes.

Q. Did Mr. Young tell you that you would have to make your guarantee or you would be fired?

A. Not that I can recall.

Q. Did he ever tell you anything of the kind?

A. Mr. Young never laid any laws down to me. Mr. Tobin was my immediate manager and if anything was said at all, Mr. Tobin would have said it.

Q. Did Mr. Tobin ever tell you that?

A. Not that I recall.

Q. Now, after rejoining the Guild, did you attend the [172] negotiations between the management and the Guild?

A. I attended every one but one.

Q. Now, at these negotiation meetings, there were present representatives of the management: is that correct?

A. That is correct.

(Testimony of Leonard Lugoff.)

Q. And representatives of the Guild; is that correct? A. That is correct.

Q. And representatives of the Guild; is that correct? A. Yes, sir.

Q. And observers? A. Yes, sir.

Q. Now, were those observers members of the Guild? A. Yes, they were.

Q. Was there ever any exception to that?

A. There never was in my knowledge anybody attending the Guild negotiations that wasn't a member of the Guild.

Q. How many of those meetings do you recall attending? A. Oh, five or six.

Q. Some of them were *doing* the year 1939?

A. They were all during the year—that is, most of them were during the year 1939. There were some during 1940; that is, grievance committees.

Q. After you got your guarantee, did you do anything further with respect to attempting collective bargaining for your department? [173]

A. Yes. I made up a contract similar to the Herald's contract, the Herald-Express contract, trying to bring into effect just what the classified people, the classified department would gain by signing a petition, stating my theory of wages for the girls and the wages for the outside sales people and different revisions so far as territory was concerned and so forth.

Q. Was that the contract drawn up providing for the parties, the Citizen-News Company and the Guild?

(Testimony of Leonard Lugoff.)

A. Yes, that was written up as near in legal form as I could make it.

Mr. Sargent: I will object to that unless it was presented to some representative of the management.

Q. (By Mr. Sokol) What did you do with the contract?

A. I took it around to the people that I thought were interested in having the Guild act as their bargaining agent and showed them just what we could ask for if we got the Guild to act as bargaining agent.

Trial Examiner Whittemore: I think the basis of your objection was whether or not it ever reached the management.

Mr. Sargent: And at this time I move to strike what he said with regard to this, and also the petition, on the ground there is no evidence in the record that either one of them ever were brought to the knowledge of the management.

Trial Examiner Whittemore: Well, I will deny the motion [174] as to the petition. I withhold ruling in regard to this contract until something further is shown.

Mr. Sokol: It does show the union activities. We will show it got to the management's ears.

Mr. Sargent: Do you deny it with regard to the petition without any evidence at all to show it was ever brought home to the management. The evidence is that he took it around to certain employees.

(Testimony of Leonard Lugoff.)

Trial Examiner Whittemore: I will deny the motion on the basis of the fact that there is some showing, at least sufficient enough for its admission into evidence. As to what weight will be given to it, I shall not determine until I have the whole record before me. There is some evidence showing that he was getting the petition signed during working hours when either Mr. Tobin or Mr. Young was around there. That might not prove absolutely that the management knew about it, but at least is an inference that they did. I am not going to strike it from the record.

Now, if Young and Tobin deny they knew anything about it, why, that is something to be taken into consideration as well.

I have denied your motion to the petition incident. Now, so far as this incident is concerned, I am reserving ruling until I learn more about it.

Q. (By Mr. Sokol) Now, prior to the time you were reinstated in August, 1938, and when you had been a member of the [175] Guild before the strike, had you attended any negotiation meetings?

A. No.

Q. Now, you drew up this contract and you showed it to the people in your department?

A. Yes, to some of the people in my department.

Q. Did you have any quarrels with anyone connected with the management over that?

Trial Examiner Whittemore: You are now referring to that contract?

(Testimony of Leonard Lugoff.)

Mr. Sokol: Yes.

A. No quarrels in connection with the contract.

Q. Now, about this time when you were doing that, did you have any altercation, by that I mean any heated conversation, in the presence of George Palmer?

A. Yes, I had an argument with——

Mr. Sargent: With regard to what, Mr. Sokol?

Q. (By Mr. Sokol) With regard to unions and your activities?

Mr. Sargent: This is not with regard to this particular contract?

Mr. Sokol: No.

Mr. Sargent: I renew my motion to strike on the grounds that this particular contract was discussed only with certain employees in his own department and there is no evidence that [176] the management had any knowledge about it.

Trial Examiner Whittemore: Do you propose to make any other showing that it was known to the management?

Mr. Sokol: Well, yes, we are going to tie it in. This is a small concern and they only have a half a dozen people working in the department.

Trial Examiner Whittemore: I will still reserve decision on your motion to strike.

Q. (By Mr. Sokol) When did this argument occur? A. —in the month of August, 1939.

Q. What occurred?

(Testimony of Leonard Lugoff.)

A. Well, it was an argument which started by Johnny Badovinac saying that the management was going to close down the plant if the Guild in its negotiations for a new contract didn't act reasonable.

Mr. Sargent: You didn't get the date of that, Mr. Sokol.

Q. (By Mr. Sokol) When was that?

A. August, 1939.

Q. Who was present?

A. Well, there was a number of people present. The only ones that I remember distinctly at the time were George Palmer and Johnny Badovinac.

Q. Is George Palmer related to the owner?

A. Well, he is the son of O. T. Palmer, one of the owners.

Q. Did this occur adjacent to Mr. Young's office?

[177]

A. It occurred about 15 feet from Mr. Young's office.

Q. Right out there in the room? A. Yes.

Q. Where you assembled? A. Yes.

Q. What did you say to him?

A. Well, I told Johnny, I said—I knew him very well and I said, “Johnny, I have been out to all these negotiations and the Guild isn't asking anything unreasonable up there at all. All they are asking for is merely a small increase in wages and that Helen Brichoux be put on the——”

(Testimony of Leonard Lugoff.)

Mr. Sargent: Was this statement made in the presence of George Palmer?

The Witness: Yes.

Mr. Sargent: No objection. You said George Palmer was the son of Judge Palmer's brother?

The Witness: O. T. Palmer, yes.

Mr. Sargent: All right. No objection.

The Witness: May I go ahead?

Mr. Sokol: Yes.

A. I said, "I have been up to all these negotiations, and that the Guild hasn't been asking for any unreasonable things." That they were merely asking for a very small increase in wages, and that Helen Brichoux and Karl Schlichter be protected, and that one of the office boys be classified as [178] a reporter, and I said, "You are spreading a rumor that the plant is going to close up," and that is unfounded.

He said, "Well, it comes from the management."

I said, "Listen, all you are doing by spreading a rumor like that is getting people scared about their jobs and making people in the Citizen News hate the Guild." I said, "If you persist in anything like that, all it means to me is that you are a company stooge."

So he kept on denying it and George Palmer at that time stuck his nose in and said, "Well, he knew that was a fact and he was willing to gamble on it."

Mr. Sargent: I didn't understand the part about the company stooge.

(Testimony of Leonard Lugoff.)

The Witness: I said if he kept saying such a thing came from the higher-ups, as Johnny said it did, I accused Johnny of being a company stooge because all that rumor was doing was scaring people and having them hate the Guild.

Q. (By Mr. Sokol) What did Palmer say?

A. Well, George Palmer backed up Johnny Badovinac.

Q. In what?

A. In effect that he was willing to bet money that such a thing was going to happen.

Q. What would happen?

A. That the plant would close down if the Guild persisted in their negotiations. [179]

Q. Did Badovinac accuse you of doing things in regard to promoting unionism?

A. No, John Badovinac didn't.

Q. Not at any time?

A. Johnny Badovinac never accused me of promoting. He knew that I was a member of the Guild. He knew that I attended all the meetings because he used to ask me what took place at these meetings.

Trial Examiner Whittemore: Are we going to have this witness on much longer?

Mr. Sokol: Yes.

Trial Examiner Whittemore: Then I suggest this is a good point to recess for today. We will reconvene tomorrow morning at 9:30.

(Testimony of Leonard Lugoff.)

(Whereupon, at 4:30 o'clock p. m., the hearing was adjourned in the above-entitled matter until 9:30 a. m., Friday, November 15, 1940.)

[180]

PROCEEDINGS

Trial Examiner Whittemore: The hearing will please come to order.

Mr. Sargent: Before you go on, you asked me if I would prepare a short stipulation providing for the concession with regard to the company having sufficient funds.

Mr. Sokol: Do you have that in written form? May we go off the record?

Trial Examiner Whittemore: Yes.

(Discussion off the record.)

Trial Examiner Whittemore: On the record.

LEONARD LUGOFF,

a witness called by and on behalf of the National Labor Relations Board having been previously duly sworn, was examined and testified further as follows:

Direct Examination

(Continued)

Q. (By Mr. Sokol) To your knowledge, did you ever go to sleep while you were supposed to be working for the Citizen?

A. Emphatically not. And I might state at the present time that yesterday that sleeping was

(Testimony of Leonard Lugoff.)

treated as a joke, but I want to state emphatically that I consider it seriously now, that I never went to sleep on the job and if I were contemplating anything like that I certainly wouldn't go to sleep in front of the Citizen-News on Wilcox and Selma.

Q. That is not the question. You say you didn't?
[182]

A. Yes.

Q. Now, this business of building up the classified ad business, how is that done?

A. Well, you cover the territory. You go out and the main object was to try to sell monthly accounts, accounts that ran until ordered stopped. They are on a monthly basis and they usually ran month to month. Some ran for a period of years.

Q. Let me ask you: Did you build up this territory?

A. Yes, I did. When I started on the territory there was no accounts to my credit at all.

Q. As a matter of fact, were some of those accounts that you got for a month or so, or longer, that is, contract accounts?

A. The main ideal in selling advertising, classified advertising, is to get as many "until forbid" accounts as possible. That is accounts that run four months or two months or a year.

Mr. Sokol: Mark this 18E for identification.

(Thereupon, the document referred to was marked as Board's Exhibit 18E, for identification.)

Q. (By Mr. Sokol) I show you Board's 18E for identification. Now, that is an original record of the company, and doesn't that show that even after you left your paper and before anyone else was on your job that the accounts which you had gotten under contract and otherwise continued to run?

A. Yes, it does. It is just about the same lineage as the [183] preceding week.

Q. In other words, that was business that you built up that came in automatically?

Mr. Sargent: These are very leading questions, your Honor. I don't want to impede counsel's examination but he is on direct and not cross.

Trial Examiner Whittemore: Well, I suggest at any time you feel that an objection is justified that you voice it and I will rule upon it.

Mr. Sokol: I offer this as Board's 18E.

Mr. Sargent: May I see it, please? I have no objection to it.

Trial Examiner Whittemore: It will be received.

(Thereupon, the document heretofore marked for identification as Board's Exhibit No. 18E, was received in evidence.)

BOARD EXHIBIT 18-E

CLASSIFIED ADVERTISING DEPT. COMMISSION REPORT

WEEK ENDING April 4 1940

SALESMEN

Form CL-37

NAME	CASH ADS	SALARY	ADS	LINES	COMM.	BONUS	Total Comm.
J. M. Reed			232	2101	W.D. 2.30		36.14
P.W. Allen			98	567			12.32
M. Mc Keller			53	532			(11.17) 14.03
L.S. Ruzoff	3/30/40 per paper		118	585			
J. Starling			22	69			
J.R. Tolin			45	229			
NATIONAL LABOR RELATIONS BOARD							
CASE NO. 10,000,000 X 18-E							
IN THE MATTER OF Citizen News							
DATE 11/15/40 Ruzoff							
Van Vleet							

PHONE ROOM

J. Vessels	1.60		399	981	W.D. .20	OS. -.35	15.41
J. Whitebrook	1.25		472	1327		OS. -.55	20.14
E. Powell	.70		298	896		OS. -.25	(12.26) 14.00
J. Davis	.40		289	893	W.O. .40	OS. -.60	11.19
M.S. per	2.00		486	1089		OS. - 1.05 DH. - .15	17.31

VOLUNTARY

J. Johnson					.50		.50
H. Brichoux	.10				.85	OS. -.10	.85
L. Weiss							
M.S. Schenker	Sales 35.14				8.79		8.79
					4/4/40		

(Testimony of Leonard Lugoff.)

Q. (By Mr. Sokol) Will you explain then to the Examiner if a new man were to come on your job, what would occur to those accounts?

A. Well, the new man—the main thing on the job is selling and getting classified advertising and after they have been sold the next thing is to service them, which is relatively easy. In other words, a man coming on if he were handed my accounts on my territory, his main job would be merely servicing. [184]

Q. How long did it take you to build up the accounts?

A. I worked on this particular territory seven years.

Q. When you were last on the stand last night you spoke about George Palmer. What is his position with the company?

A. George Palmer at the time that I worked with the Citizen News was classified manager in charge of classified credits, or credit manager in charge of classified credits.

Q. Just prior to your discharge, your final discharge, did you attend a conference at which there was present members of the management and the Guild?

A. There was such a conference in relation to Pat Killoran's grievance complaint.

Q. Did you attend that? A. Yes, I did.

Q. Was that in the month of March, 1940?

A. That was in the month of March, 1940.

(Testimony of Leonard Lugoff.)

Q. Also just prior to your discharge did you circulate another petition around the plant?

A. Yes, I did.

Mr. Sargent: I object to that answer and ask that it may go out unless some date is given or approximate time.

Trial Examiner Whittemore: I presume that is preliminary.

Q. (By Mr. Sokol) Yes. When was it that you did that? A. During the month of March.

Q. Now, can you fix the time? [185]

A. Around the 15th of the month.

Mr. Sokol: Will you mark this Board's Exhibit 19 for identification.

(Thereupon, the document referred to was marked as Board's Exhibit No. 19 for identification.)

Mr. Sargent: I assume you are going to continue with regard to the petition further?

Mr. Sokol: Yes, here it is.

Q. Is this the petition, Board's 19 for identification? A. Yes, it is.

Mr. Sokol: I offer that.

Mr. Sargent: No objection.

Trial Examiner Whittemore: It will be received.

(Thereupon, the document heretofore marked for identification as Board's Exhibit No. 19, was received in evidence.)

(Testimony of Leonard Lugoff.)

BOARD EXHIBIT 19

We, the undersigned, consisting of a constituted majority of workers of the Classified Department of the Hollywood Citizen News, believing, as the management has stated from time to time, that all workers of all departments in the Citizen News are entitled to the Rights and Privileges obtained by the Editorial department in its contract with the management, and, taking the management at its word when it further states that they the Citizen News, although believing that all the workers of all departments are entitled to these Rights and Privileges, will not bind themselves in any way to recognize such Rights and Privileges until the time that such departments do obtain a majority of workers in their respective departments and do then petition a bargaining agent under the National Labor Relations Act.

Therefore we do hereby petition the Los Angeles Newspaper Guild to act as the bargaining agent of the Classified Department of the Citizen News and do authorize them to obtain written commitment of such Rights and Privileges in a separate contract.

Signed:—

Q. (By Mr. Sokol) Now, where did you circulate that?

A. In the classified department.

(Testimony of Leonard Lugoff.)

Q. To everybody or was it to a few?

A. Why, that particular petition, I enlarged my scope a little bit. The other petitions were circulated just a few—to just a few, but this one, I was enthused about, and I spoke to people that I never did speak to before on the Guild bargaining for classified.

Q. Would you say that you covered practically the entire [186] classified department?

A. Practically the entire department.

Q. Was Tobin there during these times on occasions? A. Yes.

Mr. Sargent: That was a very leading question, your Honor.

Mr. Sokol: I don't see anything leading in that particular question. I asked the man who was present.

Mr. Sargent: You didn't ask him who was present. You asked him if Tobin was present on various occasions.

Trial Examiner Whittemore: The point is you didn't do that. I will sustain the objection to that question.

Q. (By Mr. Sokol) Well, who was present during these times when you were circulating the petition? Give us the names of the people.

A. Well, Florence Whitebook, Florence Davis, Helen Brichoux, Mrs. Bovee, Philip Allen, and Mr. Tobin during the time was in and out of the office, in and out of his office.

(Testimony of Leonard Lugoff.)

Q. Are those all of the people or just some of them? A. Just some of them.

Trial Examiner Whittemore: May I ask at this point if any of those that you named besides Tobin were in any way connected with the management? Whitebook, Davis, and Allen?

The Witness: You mean in a business or social way?

Trial Examiner Whittemore: I mean if any of them were [187] connected in a supervisory way.

The Witness: Florence Davis is head of the phone room.

Trial Examiner Whittemore: What is that?

The Witness: She is supervisor of the phone room.

Trial Examiner Whittemore: Supervisor of the phone room? A. Yes.

Trial Examiner Whittemore: Thank you.

Q. (By Mr. Sokol) By the way, did she tell you anything about your circulating that petition?

A. I don't quite understand the question.

Q. Let me ask you: When you showed her that particular petition——

Mr. Sargent: Just a minute, your Honor. Might I suggest that the question be if he had a conversation with regard to this.

Q. (By Mr. Sokol) Did you show her the petition? A. Florence——

Q. Whitebrook.

(Testimony of Leonard Lugoff.)

A. Florence, yes, I showed Florence Whitebrook the petition.

Mr. Palmer: You were talking about Davis, however.

Mr. Sokol: I had the names confused.

Trial Examiner Whittemore: I had them confused myself. I thought it was Florence Davis.

The Witness: It is Florence Davis who supervises the [188] phone room.

Q. (By Mr. Sokol) Did she comment on the petition?

A. Only that she thought it was a petition that——

Mr. Sargent: I object unless she said she thought this.

Q. (By Mr. Sokol) What did she say? You have told us what she said?

A. That she thought a petition like that would be a——

Q. Did she say she thought that?

A. She said a petition like that would go over a good deal faster than the previous petitions.

Q. Did you speak to Florence Whitebook?

A. Yes, I did.

Q. What did she say?

A. That was the first occasion that I spoke to Florence Whitebook. As I said, I was enthused about the petition and Florence Whitebook had held the position of one of the strikebreakers. She was on Helen Brichoux' job and up to this time

(Testimony of Leonard Lugoff.)

I had never spoke to her about having the Guild bargain because she was very well satisfied. In other words, she owed the position she occupied to the strike.

Q. She had a striker's job you mean?

A. Yes.

Q. What did she say?

A. And she says, "Rudolph," she says, "why do you want to do something like this. You know you are sticking your neck [189] out by handing around the petition." She said, "Why don't you let somebody else do that?"

Q. Do you know Frank Gilman?

A. Yes, I do.

Q. What was his position with the company?

A. He was one of the credit managers in charge of part of the display credits.

Q. Did he speak to you about your activities in circulating these petitions?

Mr. Sargent: Your Honor please, I have an objection to any testimony here which is said by any employee who represented the management. I do object to such conversations that took place among the employees, which wouldn't be binding upon the management.

Mr. Sokol: Well——

Trial Examiner Whittemore: As I understand it, you deny that this Gilman was in any way connected with the management?

(Testimony of Leonard Lugoff.)

Mr. Sargent: I certain deny that Florence Whitebook was, and I ask Florence Whitebook's remarks go out as not binding upon the management.

Mr. Sokol: Well, the only purpose of having Florence Whitebook's statement in, Mr. Examiner, is to show what this witness was doing. I mean to show that he was engaged in Guild activities. It doesn't put the onus on the management [190] if they didn't know about it.

Mr. Sargent: It is putting something in when there is nothing in the evidence that shows they knew anything about it. On that ground I move that the testimony of the witness with regard to Florence Whitebook and her remark about his circulating this petition be stricken.

Trial Examiner Whittemore: According to my notes the remark that you now refer to was her suggestion that he lay off and her asking him why he stuck his neck out.

Mr. Sargent: Yes, that is a remark of a fellow employee not connected with the management in any way.

Trial Examiner Whittemore: That remark may be stricken.

Q. (By Mr. Sokol) Tell us when did you have this conversation with Mr. Frank Gilman?

A. Around the month of August.

Q. What year? A. 1939.

(Testimony of Leonard Lugoff.)

Q. Where did it take place?

A. It took place near his desk.

Q. Who was present?

A. George Palmer sits right across.

Q. Did he take part in the conversation?

A. No.

Q. Did he overhear the conversation, if you know?

A. I imagine—yes, he couldn't help but overhear it. [191] He is just a few feet away.

Mr. Sargent: Unless the witness can show that George Palmer in some way took part in it or it is definite that he did know what took place, I object to any conversation between this witness and any other employee with regard to it.

Trial Examiner Whittemore: This is the conversation with Gilman, as I understand it.

Mr. Sokol: Frank Gilman.

Trial Examiner Whittemore: All he has testified to is that George Palmer sat nearby and he believed he was near enough to hear it.

Mr. Sargent: Well——

Trial Examiner Whittemore: Now, on what basis do you object to the conversation that he had with Gilman?

Mr. Sargent: Well, I think it is the same as with Florence Whitebook. He doesn't claim that Gilman is a member of the management, does he? Mr. Gilman isn't a supervisory employee.

(Testimony of Leonard Lugoff.)

Trial Examiner Whittemore: I raised that question awhile ago when you said you had no objection to that.

Mr. Sargent: No, I have asked Judge Palmer whether Gilman was a supervisory employee and I understand he was not.

Trial Examiner Whittemore: That is the matter for you to bring out in your probe. Certainly a fair inference may be drawn from this witness' testimony that he is in some way [192] connected. While he may not be an officer of the company, in being in charge of display credits, it seemingly would give him some standing as a supervisory employee. I suggest that you tell just exactly what Mr. Gilman's duties were.

Q. (By Mr. Sokol) What are Mr. Gilman's duties?

A. Mr. Gilman is credit manager in charge of part of display credits.

Q. What does he do?

A. He passes on accounts that are brought to him by the display people for charging.

Trial Examiner Whittemore: You mean by that that he can accept or reject an account that is brought in by a solicitor?

The Witness: Yes.

Trial Examiner Whittemore: Go ahead with the conversation.

Q. (By Mr. Sokol) Give us the conversation.

(Testimony of Leonard Lugoff.)

A. He told me that it would be better for me to quit sticking my nose in Guild affairs and showing less activity because he had it pretty straight that the management was going to weed out everybody connected with the Guild and he also made the statement that——

Mr. Sargent: Just a minute, please. Thank you very much.

Q. (By Mr. Sokol) Continue. [193]

A. And he also made the statement that after the next Presidential election that there would not be any more National Labor Relations Board.

Mr. Sargent: What did you say?

The Witness: No more National Labor Relations Board.

Mr. Sargent: Thank you. I couldn't hear you.

Q. (By Trial Examiner Whittemore) Mr. Gilman wasn't connected with the business forecast department, was he?

Q. (By Mr. Sokol) Now, that brings us up to the fateful date of March 30, 1940. This petition activity of yours was within a week or two prior to that date? A. Yes.

Q. And on March 30, 1940, did you go to work as usual?

A. My working week ended on Friday?

Q. Oh.

A. And the 30th was Saturday.

Q. Friday were you notified by Tobin or anyone else?

(Testimony of Leonard Lugoff.)

A. No, there was nothing said about leaving my job, being fired. Tobin didn't make any remark, which was a little bit unusual because if he were firing a man—and I had this experience in 1938—he would call him to his office and tell me about it and ask him to arrange his territory and accounts so that the territory could be worked intelligently. Certain calls were to be made and certain copies to be made.

Q. He was your boss, wasn't he? [194]

A. He was my immediate boss.

Q. Did he ever intimate to you that you were going to be fired? A. No.

Q. There is now in evidence Board's Exhibit 7. You received that on March 30th? A. Yes.

Q. Now, I show you the envelope. Can you tell us what time you received this?

A. Well, it went to the post office at 8 p. m. Saturday, 8:00 o'clock at night.

Q. So then you received it sometime after that, by special delivery?

A. I received it at 10:00 o'clock, I think it was delivered at the house.

Q. 10:00 p.m.? A. 10:00 p.m.

Q. Saturday evening? A. Saturday night.

Q. Will you look at the original, and it is signed by—— A. Harlan G. Palmer.

Trial Examiner Whittemore: May I see that, please?

(Testimony of Leonard Lugoff.)

Mr. Sokol: Yes.

(Counsel hands document to the Trial Examiner.)

Q. (By Mr. Sokol) Now, after you received that, did you [195] come back down to the plant the following Monday?

A. The following Monday I came down to the plant at 8:30, the regular time to appear for work and went in to see Tobin and I said to Tobin, "I know this is as much of a surprise to you as it is to me and if you want me to, I have got a number of calls to make this morning. I have got copy to change and I will be glad to do that and give you a list of the accounts, when to service them, and when to see them."

Q. Did you do that?

A. He said, "Don't go out and make any calls but tell me who you are supposed to see and any changes of copy you have got, write it up and put it through."

Q. Did you work there that morning?

A. I worked up until 12:00 o'clock.

Q. Did you get paid for that?

A. No. I thought that was necessary and I just did it of my own free will.

Q. At the time of your discharge in your department were there any other members of the Guild?

A. There was only one. That was Helen Brichoux.

(Testimony of Leonard Lugoff.)

Trial Examiner Whittemore: Will you read that question and answer, please?

(Record read by the reporter.)

Trial Examiner Whittemore: Thank you.

Q. (By Mr. Sokol) Following that, did the Guild to your [196] knowledge put in a protest over your discharge?

A. Yes, they did. I was present when Mr. Sargent received that protest.

Q. What date was that?

A. That I think was about April the 10th.

Mr. Sargent: A little louder, please.

The Witness: I am not positive but I think it was April the 10th.

Q. (By Mr. Sokol) 1940? A. 1940.

Q. Where was that session held?

A. The session was held in the auditorium of the Citizen-News.

Q. Did Mr. Sargent tell you the reason for your discharge at that time?

A. He said he didn't know the reason. He had to take it up with the management and he answered later on. He answered the Guild I think through a letter.

Q. Did he at any time tell you those reasons which he set forth in the letter, tell you those reasons personally? A. No.

Q. Now, with respect to work in the classified. Could you do other work besides this outside solicitation? A. Yes, I had experience.

(Testimony of Leonard Lugoff.)

Mr. Sargent: Did he or could he? [197]

Q. (By Mr. Sokol) Could he?

A. I have had experience doing counter classified work and marking the papers for lineage computation and classified territory, yes.

Q. How about the phone work?

A. I have done phone work too.

Q. Receiving ads on the phone.

A. And soliciting over the phone.

Q. Do you know what they got, did they have a guarantee?

A. They had originally when they came to work for the Citizen-News they started at a \$10 guarantee, which they protested.

Q. You knew what they were getting last?

A. At last everybody was getting a \$24 guarantee. That went into effect when I took that matter up with Mr. Young.

Q. That included the phone people too?

A. That included everybody in classified.

Q. Did you have seniority over some of the people who were in the phone room?

A. Yes. You mean I was there longer?

Q. Yes.

A. In the employe of the company?

Q. Yes. A. Yes.

Q. With respect to the other employees, how many had been [198] there longer than you?

A. There were quite a number of them that had

(Testimony of Leonard Lugoff.)

been there longer. I would say at least half of the people had been there longer.

Q. And you had been there longer than half of the people? A. Yes.

Q. At the time of your discharge?

A. At the time of my discharge.

Mr. Sokol: Can it be stipulated at this time who replaced him, that another man was hired to replace him. Can we stipulate to that?

Mr. Palmer: Another man was transferred. A boy from the display desk was transferred, Wallie Sellers.

Q. (By Mr. Sokol) Now, about this man Sellers we just heard about, did you know what kind of work he did while you were working in classified?

A. He was on the copy desk and display.

Q. What does that mean?

A. It means he received the copy. He received it and passed it on to the composing room. They handed in their copy to him and he relayed it upstairs.

Q. Was he a solicitor of advertising?

A. No. To my knowledge he never did any soliciting.

Mr. Sokol: That is all.

Mr. Sargent: Your Honor, there are a few things here [199] that have arisen that I would like to have Judge Palmer ask about and then I will conduct the rest of the cross-examination. We will endeavor not to cover the same ground.

Mr. Sokol: Off the record.

(Testimony of Leonard Lugoff.)

Trial Examiner Whittemore: Off the record.

(Discussion off the record.)

Cross Examination

Q. (By Mr. Palmer) How many times, Mr. Lugoff, including the last time, had you been discharged by the Citizen, or the Citizen-News?

A. May I ask a question on that?

Q. Yes.

A. Would you count the firing in 1938 in that? Do you include that? Was that a firing?

Q. Well, you can count that, and enumerate the times.

A. Well, I would say three times.

Q. When were they?

A. One was in 1940, one was in August, 1938, and to the best of my recollection one was back in about, I would say, 1928.

Q. Were any reasons given to you in 1928 for your discharge?

Mr. Sokol: That is objected to as immaterial what happened way back there.

Mr. Sargent: If your Honor please, the records were gone into by counsel for the Board. I think that the president of the respondent has a right to inquire. [200]

Trial Examiner Whittemore: I do think it is a bit remote but on the other hand you have traced his employment further back than that.

(Testimony of Leonard Lugoff.)

Mr. Palmer: Last night or yesterday afternoon the witness left the impression that he had quit the Hollywood Citizen voluntarily to go over to work for the Hollywood News.

The Witness: That is right, I did. I restate that I quit the News voluntarily, or quit voluntarily to go to the News at higher—at higher pay.

Q. (By Mr. Palmer) That you were not discharged by the Citizen?

A. No, I was not discharged.

Q. Why did you say you were discharged in 1928?

A. There was a short period—now, I am hazy on this particular date. There was a short period I came back to work for the Citizen and I was discharged, but at no—it wasn't at the time that I quit the Citizen to go to the News.

Q. When was this that you came back to work for the Citizen?

A. It was merely a short time and I think it was some time between 1928 and 1931. There was a very short period in there that I worked and to the best of my recollection I was fired.

Q. Now, let me see. You left the Citizen in 1928 to go to work for the Hollywood News?

A. That is right.

Q. Then you left the Hollywood News to come back to—— [201]

A. A year later.

Q. A year later?

A. Yes.

Q. To come back to work for the Citizen?

(Testimony of Leonard Lugoff.)

A. To the best of my knowledge and that probably is what happened.

Q. Then you were discharged by the Citizen, is that a fact? The reporter can't hear your nod.

A. Yes, I would say I was fired at one time during that period.

Q. That was some time you think about 1930?

A. Before 1930.

Q. Before 1930? A. Yes.

Q. Approximately in 1929, some time?

A. Some time around there, a very short period.

Q. Then after that what did you do?

A. Well, after that I worked on the Beach papers for a short time and then I came back to the Citizen-News.

Q. And then you came back?

A. I beg your pardon. Then I came back to the News.

Q. The Hollywood News?

A. The Hollywood News.

Q. At that time there were two newspapers in Hollywood, one known as the Hollywood Citizen, and one known as the [202] Hollywood News?

A. That is right.

Q. And the Hollywood Citizen was owned by the people who purchased the Hollywood News?

A. That is right.

Q. Then at the time of the purchase of the Hollywood News in 1931, was it not? A. Yes.

Q. You started working for the Citizen-News?

(Testimony of Leonard Lugoff.)

A. I was working with the News at the time of the merger.

Q. Yes. At the time the Citizen bought the Hollywood News? A. That is right.

Q. You continued or you went to work then for the Citizen News? A. Yes.

Q. What was your compensation then?

A. 25 per cent commission.

Q. That meant what, Mr. Lugoff?

A. That meant 25 per cent of the advertising brought in that was passed on by the credit department to be billed, and 25 per cent of the cash ads, in other words, 25 per cent of the bulk of the advertising brought in.

Q. Was there any guarantee in connection with that? A. There was no guarantee at all.

Q. 25 per cent of any business that you produced? [203]

A. That is right.

Q. Was the amount determined as your compensation? A. Yes.

Q. How long did you work at that rate?

A. About a year.

Q. Then what did you do?

A. Then I voluntarily quit.

Q. What did you do after you voluntarily quit?

A. Well, I went to work for the Herald for a while working rentals.

Q. That is the Evening Herald?

(Testimony of Leonard Lugoff.)

A. The Evening Herald.

Q. Los Angeles? A. Yes.

Q. How long did you work for the Evening Herald? A. About five or six months.

Q. Five or six months?

A. Yes. And I think I went down to the—worked for a while at the Venice Vanguard and Culver City Star News.

Q. About how long did you work there?

A. About a year.

Q. After that what did you do?

A. Then I didn't do anything until I went to work for circulation in the Citizen-News selling door-to-door subscriptions. [204]

Q. Did you come to the Citizen-News and ask for a job at that time?

A. Yes, that is right.

Q. You were given the job as a subscription solicitor?

A. I might add that that is the only way I ever got a job from the Citizen-News is asking them for it. I never was called up and told to come down.

Q. You never were called by the Citizen-News. That was in 1934 that you started work as a subscription solicitor?

A. That was January, 1934, yes, sir.

Q. And from the time you resigned in through until 1934 you had about a year's work on other papers in classified?

(Testimony of Leonard Lugoff.)

A. About a year and a half I would say.

Q. You had about a year, or rather a half a year on the Evening Herald and how long——

A. About a year on it.

Q. —on the Beach papers? A. Yes.

Q. Now, after you had been with the circulation department, that was for how long?

A. Six months.

Q. Then did you ask Mr. Tobin for a job in classified?

A. Well, the circulation solicitors are given, or were at that time given the option of selling classified along with their circulation, and getting 25 per cent on it. And I had [205] a few accounts running at that time, and I never was very much interested in circulation. I didn't like punching doorbells and I asked Tobin, I said, "You have got my old territory running, and I have got a few accounts running on it and I am going to quit circulation and if you want to hire me fine and dandy, because whether you hire me or not, I am going to leave circulation."

Q. And he hired you at that time?

A. Yes.

Q. On what basis?

A. 25 per cent commission.

Q. The same as you had previously worked on?

A. Yes.

Q. How long did you work on the 25 per cent basis then? A. Six months.

(Testimony of Leonard Lugoff.)

Q. Then did you approach Mr. Tobin again about the compensation?

A. Yes—not compensation, no. I said I would appreciate it if he took me off of the 25 per cent and paid me something similar, working it on a lineage basis—or not something similar, pay me a similar amount on a lineage and ad basis like the other men were getting.

Q. When you say you wanted him to pay you a similar amount—

A. That is similar to the 25 per cent that I was making.

Q. If you were earning \$20 a week you wanted him to work out[206] a \$20 a week basis but upon a different method of computation, is that what you mean?

A. No, I wanted him to work out a similar compensation comparable to the 25 per cent commission I was getting; in other words, I was getting 25 per cent on the business I brought in. I wanted him to work out a lineage and ad basis of pay similar to that.

Q. You mean a lineage basis and an ad basis that together would be equivalent to 25 per cent?

A. That is right.

Q. Of the selling price of the ads?

A. That is right.

Q. Why did you ask for that change?

A. Well, he was paying everybody else that and I figured that that was the way to be paid.

(Testimony of Leonard Lugoff.)

Q. Well, did it make any difference as long as it was the same 25 per cent basis?

A. No, it really didn't make any difference. I just requested to be considered the same way.

Q. After that conversation, what was the rate that was fixed? The rate of compensation?

A. He fixed a \$10 base pay and a cent and a half a line and a cent an ad.

Q. What do you mean by \$10 base pay?

A. That he figured pay from \$10 and then a very small [207] commission on lineage, and ad commission on top of that.

Q. You mean you got \$10 whether you sold any ads or not?

A. Well, Mr. Palmer, I was running a certain amount of business per week at that time and there was no possibility of those ads dropping out. There was business that ran week by week. In other words, I was bringing in at that time so much money per week and had been for the past three or four months.

Q. What I am getting at, Mr. Lugoff, is just to make it clear what the \$10 base pay is. The \$10 pay base had nothing whatsoever to do with the number of ads or the amount of lineage?

A. No.

Q. That you produced? A. No.

Q. It was entirely independent of that, before any compensation would be determined, \$10 would be assigned to you? A. That is right.

(Testimony of Leonard Lugoff.)

Q. Independent of the number of ads or amount of linage; is that correct? A. Yes.

Q. Plus the \$10 then you got a cent and a half on each line of advertising that you produced?

A. Yes.

Q. Plus the cent and a half a line you got one cent for [208] each advertisement that you produced; is that correct? A. That is correct.

Q. How long did you continue at that rate of compensation?

A. Up until the time I was fired in 1940, except for one change. Now, when Mr. Tobin gave me this, I thought that he was making a compensation there that was similar to the 25 per cent. After I worked on it for a week, I started figuring out myself and he had chiseled me a little bit on it and I was way below my 25 per cent and I protested and I kept protesting all the time I was there and the only adjustment I ever got on it he said, "Well, if you get it up to a 1000 lines a week, or if any week you run a 1000 lines, we will be willing to give you a half a cent more a line commission."

Q. About when was this, Mr. Lugoff? Can you recall about when this was?

A. That happened about a week after—you mean that I protested?

Q. Yes.

A. About a week after Tobin put it in effect. I asked to be later on—later on I asked to be put back on the 25 per cent and he said he couldn't do

(Testimony of Leonard Lugoff.)

that, in fact, I asked him several times to be put back to the 25 per cent.

Q. Did he say why he couldn't do that?

A. He just didn't want to do it. He didn't say why. He very seldom gave reasons. He just didn't want to do it. [209]

Q. Was that some time in 1936 or 1935, you think?

A. It was way before 1935.

Q. It was some time in 1934?

A. Yes, it was some time in 1934.

Q. Now, when did you next take up with Mr. Tobin anything about rates of compensation?

A. It seemed to be a continual taking up with Tobin all the time I was there. I was dissatisfied with the rate of pay I was getting and, in fact, the rate of pay I was getting was lower than anybody on the outside was getting and I told Tobin that I thought it was unfair. I asked if he couldn't do anything else to put me back to my 25 per cent commission. There was a continual harassment on my part of Mr. Tobin to change me around and give me what I considered a fair compensation.

Mr. Sargent: I object.

Q. (By Mr. Palmer) You mean you were continually harassing Mr. Tobin and not Mr. Tobin continually harassing you?

A. No. Mr. Tobin was satisfied with the deal that he had.

Q. That he had? A. Yes.

(Testimony of Leonard Lugoff.)

Q. Well, now, in 1937, did you discuss classified rates of compensation, working conditions with Mr. Young? A. Yes.

Q. Will you tell the circumstances of that? [210]

A. I made an appointment with Mr.—— I already told that yesterday, it is a matter of record. I made an appointment with Mr. Young to correct what I thought was a wrong in the department and when I made the appointment I was going in by myself but I made the appointment for the following day and in thinking it over I decided that I needed moral support and I took Mr. Phil Allen in with me, who was also interested in getting a readjustment, or getting a guaranteed living wage, into the office with me.

Q. Was that your first time of going into Mr. Young's office?

A. That was the first time that I ever approached Mr. Young about anything.

Q. Didn't you go to Mr. Young's office in March with the members of the circulation?

A. I beg your pardon. That was on Mr. Young's request that we came in there and talked over classified.

Q. When was that before the one you have just mentioned, or just after?

A. That was when the Guild first organized in 19—— about May, 1937.

Q. About May, 1937. That was when the Guild first organized? A. Upstairs.

(Testimony of Leonard Lugoff.)

Q. What do you mean when they first organized?

A. When they were first—when the Guild first got into [211] the Citizen-News, and the editorial department started organizing upstairs and asking for a contract.

Q. Wasn't that, as a matter of fact, in 1936?

Mr. Sokol: I thought you testified, Mr. Palmer, you didn't know the date. Is it 1936? I will stipulate to that.

Mr. Palmer: I saw a bulletin issued by the Guild in 1936.

Mr. Sokol: Will you stipulate that the Guild organization commenced—

Mr. Palmer: I am not asking for a stipulation. I am cross examining the witness.

The Witness: It was during — may I revise that? It was during the time that the Guild was organizing upstairs and asking for a contract.

Q. I am not trying to trip the witness. I am trying to get it clear in his mind and the Court's mind, the sequence of events. Well, it possibly could have been in 1936? A. No.

Q. It was sometime in '37? A. '37.

Q. You say that was at Mr. Young's request?

A. Yes.

Q. How did Mr. Young make the request?

A. As near as I can recollect he made it in writing. [212]

Q. Did you see a copy of the writing?

(Testimony of Leonard Lugoff.)

A. I recall a copy, just what it said I don't know. I think it was in substance, it asked us all to form committees and to come into his office and talk over conditions with him.

Q. And you did then go into his office with other members of the classified department?

A. With all members of the classified department.

Q. Were all the members of the classified department there? A. Yes, sir.

Q. That was about how many?

A. At that time there were about 12 in the department.

Q. Did you have any chairman or spokesman at that time?

A. At that time, Mr. Palmer, right after that meeting I went on my vacation and by the time I came back they had had an election. In the meantime they had elected a chairman. They had turned down the Citizen-News as far as signing up a contract for a year. They made out a contract and it was passed on by the management and the management wanted to sign up for a year and classified didn't want to sign. And the recommendations that they made in the contract went in effect just the same.

I was on my vacation at the time and didn't take any part in it.

Q. Now, going back to the meeting, my question was: At the time of this meeting with Mr. Young,

(Testimony of Leonard Lugoff.)

was there any spokesman [213] or any chairman of the group?

A. At the time of the meeting, no.

Q. Who did any talking at that time for the members of the classified department, if you recall?

A. Well, I think Helen Brichoux did a little talking; Florence Davis did a little talking; most of us didn't know what it was all about. We were just in there to listen. Going in to see Mr. Young was merely preliminary to finding out what it was all about and getting together on what we wanted in contract form and then coming in to him.

Q. Now, of the conversation that you recall, and I am asking you only for that, if you can't recall you may say so, what did Helen Brichoux say at that time?

A. I can't recall any particular conversation. What Helen Brichoux said or what she was interested in, I don't know.

Q. What did Miss Davis say at that time?

A. I do know this, Mr. Palmer, that the phone girls were dissatisfied with the rate of guarantee they were getting. They started out I think at a \$10 guarantee, later raised to \$15 when the N. R. A. went in and at the end of this conference it was raised to \$22.50.

Q. Was anything said at this conference with Mr. Young about any one's dissatisfaction with the rates of pay?

(Testimony of Leonard Lugoff.)

A. Yes. That was what the phone girls had in mind. They were dissatisfied with their rate of pay.

[214]

Q. They did then at that time tell Mr. Young that they didn't believe the rates of pay were fair or satisfactory?

A. Yes.

Q. Did Mr. Young make any comments at that time or any statements to any of you?

A. No, there was no comments made on anything at that time. There was just kind of a general meeting. Mr. Tobin was there and Mr. Young was there and all of the classified was there.

Q. Was there any mention made at that time about the compensation of the outside salesmen?

A. To the best of my knowledge, the outside salesmen didn't say anything. They did say that they wanted a car allowance.

Q. Do you recall who said that?

A. Phil Allen and Mr. Price. It was just a general thing, I don't know who said it.

Q. Was any decision reached by——

A. There was no decision reached.

Q. By the classified people?

A. There was no decision reached at that time. I did myself make a suggestion, Mr. Palmer.

Q. What was your suggestion?

A. That I would like to go back on the \$35 guarantee that we were getting before, eliminate any car allowance. At one time I worked for the Citizen-

(Testimony of Leonard Lugoff.)

News in 1926 and '27 and we [215] worked on a \$30 and \$35 guarantee with a 20 per cent commission. They figured the commission at the end of the month. I did make a suggestion that I would like to see that same thing in effect again, that there should be a guaranteed wage paid to people working classified.

Q. That was in 1926 you say you worked on a guarantee?

A. I worked two and a half years—two years for the Citizen-News on a guarantee of \$35, \$30 and \$35, and 25 per cent commission.

Q. What do you mean by that?

A. I started out at \$30 and I was raised to \$35.

Q. That meant \$30 and \$35 and a 20 per cent commission, just exactly what did that mean, Mr. Lugoff?

A. It meant that you got \$30 or \$35 and you are getting—you got \$30 or \$35 as you were getting then per week salary, and at the end of the month they would figure out all the accounts billed, all the accounts you brought in cash, and multiply that by 20 per cent and if you had anything coming they would give it to you and if you didn't there was nothing lost, you still got your \$30 or \$35.

Q. You got nothing more than \$30 or \$35 unless your commissions at 20 per cent would yield something more than that amount?

A. That is right.

(Testimony of Leonard Lugoff.)

Q. Now, at this meeting with Mr. Young, you did state you [216] thought that should be the method of compensation?

A. Yes, primarily, because it meant that the outside sales people wouldn't take the bumps when conditions got bad or conditions occurred that were outside of their control.

Q. You told this to Mr. Young at that time?

A. That is right.

Q. What did Mr. Young say?

A. He didn't make any comment on any of these suggestions at that time. Mr. Tobin didn't make any comment on them.

Q. Well, before you broke up, did anybody make any suggestion to what might be done?

A. No. The understanding was that they would make this—these suggestions in contract form, have a committee take it up with Mr. Young and when that was consummated, sign it, and we would be protected for a year.

Now, as I said, I went on my vacation right after that meeting and when I came back it was all over.

Q. Well, the talk was before you left that they would adjourn this meeting and get together in an effort to determine compensation and working conditions for employees?

A. That is right.

Q. When you came back from your vacation, what did you find then?

A. I found that the outside sales people were getting the same as they already got as far as the

(Testimony of Leonard Lugoff.)

guarantee was concerned; [217] in other words there was no guarantee and they were getting a car allowance. It was to be figured out on a mileage—on the mileage covered by the territories. The phone room was raised, however, from a \$15 guarantee to \$22.50. They automatically got \$22.50 each week, everybody.

Q. But there was no change made in the outside sales force?

A. The only change was car allowance.

Q. Car allowance was added to their compensation?

A. To the compensation, yes.

Q. In your own regard how much did that amount to?

A. \$4.00 a week.

Q. About \$4.00 a week. That was a flat \$4.00 a week?

Trial Examiner Whittemore: Then your compensation was increased by \$4.00 a week?

The Witness: Yes.

Q. (By Mr. Palmer) As a result of those conferences?

A. That meeting.

Q. You said, I believe, that there was no signed agreement at that time?

A. No, that is right.

Q. But purely an oral agreement?

A. Purely an oral agreement, yes.

Q. And that Miss Brichoux at that time was a member of the Guild?

A. Yes. [218]

Q. In your meetings she contended, did she not, that—

(Testimony of Leonard Lugoff.)

A. I wasn't at the meetings. I came back after, as I said, it was all over and I asked the reason why the contract wasn't signed and it was explained to me that way.

Q. Who explained it to you?

A. Well, Benny Price, Helen Brichoux, the people who were on the committee.

Q. Miss Brichoux explained that no contract was signed because of her desire?

A. Because of her arguments in favor of the Guild.

Q. You had the Guild do the negotiating?

A. Yes.

Q. When did you join the Guild?

A. I joined the Guild October 1, 1937.

Q. Did any other members of the classified besides you and Miss Brichoux join at that time?

A. Yes, I think they all had a false idea about what we were doing and about 75 per cent of the classified joined the Guild and said, "We are Guild members now and all united," and we were delighted. We thought it was a good thing, a nice new club, and we didn't realize what the Guild was about.

Q. And about three out of the four of the classified members joined the Guild?

A. About three out of four, yes.

Q. How long did you continue as a member of the Guild? [219]

A. Until the strike occurred.

(Testimony of Leonard Lugoff.)

Q. Then what happened?

A. Then they asked me to turn in my card.

Q. Because you——

A. Didn't join the strike.

Q. ——didn't join the strike?

A. That is right.

Q. And how many from the classified department did join this strike? A. One.

Q. That was whom?

A. Helen Brichoux.

Q. Helen Brichoux so far as you know is still working at the Citizen-News?

A. She is working at the Citizen-News.

Q. In the classified department?

A. That is right.

Q. The cards of all the other classified members were taken up at the same time yours were so far as you know? A. Yes.

Q. Since then so far as you know have any of them joined the Guild? A. No.

Q. You have repeatedly asked them to join the Guild, haven't you? [220]

A. I repeatedly asked them to sign a petition. My first step, Mr. Palmer, was I found out—and that is one reason why I rejoined the Guild—I found out that you could get the Guild to bargain for you without belonging to the Guild and I figured, well, that would be the first step, so I tried earnestly to get people to have the Guild bargain for them.

(Testimony of Leonard Lugoff.)

Q. About what time was this that you took up this petition?

A. The first petition was in May.

Q. May of—— A. 1939.

Q. ——1939? A. That is right.

Q. Have you a copy of that petition?

A. Yes, I have.

Q. May we have it?

Mr. Sokol: There are certain names on the petition, Mr. Examiner, and the union has objected to revealing those names to me even. I can show Mr. Palmer the head of it.

Mr. Palmer: No, the petition upon the instigation of counsel for the Board, has been referred to, and its contents referred to and counsel knows as well as the Court knows that with the petition itself in existence that that is the only acceptable evidence. If it was not in existence true enough we could go into oral testimony. It was not at our [221] instigation that this petition was referred to.

Counsel knew when he referred to the petition that opposing counsel would have a perfect right—well, laugh if you want to, Mr. Sokol, I happen to know a little about law.

Mr. Sokol: I am not laughing at you.

Trial Examiner Whittemore: I am going to suggest if you want to continue to examine the witnesses that you forego making remarks to opposing counsel.

(Testimony of Leonard Lugoff.)

Mr. Palmer: Then I request counsel to conduct himself with respect to opposing counsel when an objection is seriously made, that he not ridicule or laugh at opposing counsel.

Mr. Sokol: I can assure the Examiner that that is wholly within Mr. Palmer's mind.

Trial Examiner Whittemore: Well, I want to ask a question at this point: This wasn't a petition prepared by the Guild in any way, was it? It was a petition prepared by this witness?

Mr. Sokol: Yes, that is my understanding.

Trial Examiner Whittemore: And as I understand from his testimony it wasn't a petition for membership in the Guild, it was merely to ask the Guild, or to ask those who signed to accept the Guild as their bargaining agent, was that it?

Miss Daniel: Mr. Examiner, the petition was drawn up [222] with the knowledge and help of the Guild because Mr. Lugoff, with the best intentions in the world, I don't think would be able to phrase a petition in the correct language and would have to have the advice and help of people with knowledge of such things, and that information and advice was given, and Mr. Lugoff was continually encouraged to do this work.

The position of the union in this is that it always instructed anybody who was working in its behalf to assure people who were timid or afraid that their names would be protected until a majority of their

(Testimony of Leonard Lugoff.)

department was obtained on a petition and that their names would not be revealed until that time. So that the union believes that it would be betraying the confidence of the people who did join if it revealed the names.

Trial Examiner Whittemore: Well, they didn't join.

Miss Daniel: The people who signed. It would very seriously be suspected and lost the confidence of people there, and there would be a general distrust and a fear to do anything that the Guild suggested.

Mr. Palmer: I will make a stipulation to this effect then, that Mr. Lugoff may read the petition and leave off the names of any signers.

Mr. Sokol: That was what I was getting at.

Mr. Palmer: And he can keep the names confidential. I don't care for the names. [223]

Trial Examiner Whittemore: Thank you. That is very good.

The Witness: I may add too, that I obtained these names and promised the people at the time that I would not show them to the management.

Mr. Palmer: I don't care about the names, I am concerned with its contents only.

Trial Examiner Whittemore: I think while you are searching for that it is a good point to take a five minute recess.

(A short recess was had.)

(Testimony of Leonard Lugoff.)

Trial Examiner Whittemore: On the record.

At the request of Mr. Palmer you may read the petition into the record, leaving off the names of the people.

The Witness: It says, "We, the following of the department of the Hollywood Citizen News, representing a majority of the employees of that department, do hereby authorize the American Newspaper Guild to be our agents for purposes of collective bargaining as established by law."

Q. (By Mr. Sokol) That is "of the blank department", is that correct? A. Yes.

Q. (By Mr. Palmer) Is there any date on that?

A. No.

Q. You promised all the people that you approached with [224] petition that you would not reveal their names?

A. They made me promise that.

Q. They asked you to promise that?

A. Yes.

Q. How many signatures did you get to it?

A. Four.

Q. That included your own? A. Yes.

Q. And Miss Brichoux?

A. And Helen Brichoux.

Q. Helen Brichoux's signature was on that?

A. Judge Palmer—

Mr. Sokol: Pardon me, will you read that question?

(Testimony of Leonard Lugoff.)

(Question read by the reporter.)

Q. (By Mr. Palmer) She was a Guild member anyway. I thought that was permissible.

A. Helen Brichoux and myself did sign.

Q. Yes. And two others signed it?

A. That is right.

Q. How many did you approach, Mr. Lugoff, with that?

A. Counting myself, Mr. Palmer, I approached at that time seven in the department.

Q. How many were there in the department to be considered? A. Twelve.

Q. And of the seven and counting yourself and Miss Brichoux, [225] four signed?

A. Four signed.

Q. Three did not? A. Three did not.

Q. During what hours of the day did you approach these seven people with this petition?

Mr. Sokol: Objected to as immaterial.

Mr. Palmer: If your Honor wishes to——

Trial Examiner Whittemore: I will permit the question.

Mr. Sokol: That is no ground for discharge. The respondent has not urged that.

Trial Examiner Whittemore: Well, it would be extremely interesting at this time if the respondent should urge it as reason for discharge. However, you brought out on direct examination the fact that he——

(Testimony of Leonard Lugoff.)

Mr. Sokol: I withdraw my objection.

Trial Examiner Whittemore: ———did do it during the working hours within knowledge of the respondent.

The Witness: I would like to make an objection to that statement "working hours." I did pass a petition around during the day but it was during the noon hour when we were supposedly at lunch.

Q. (By Mr. Palmer) I didn't mean to imply, Mr. Lugoff, when you circulated it.

Trial Examiner Whittemore: I misappropriately framed [226] my question and I apologize. It was my fault. I inserted that phrase. You simply asked him when he circulated it, what time during the day.

The Witness: I think I made a statement yesterday that I did that circulating during the noon hour.

Q. (By Mr. Palmer) During the noon hour?

A. Yes.

Q. When the people were on their lunch hour?

A. Yes.

Q. That was when they were sitting down at their desks? A. Yes.

Q. They didn't go out to lunch, the people?

A. Yes, they went out. They usually went out and came in before the time for them to go to work.

Q. As they would come in you would sit down and talk with them?

(Testimony of Leonard Lugoff.)

A. Sit down and talk with them, tell them what I was doing, telling them what I thought were the advantages of having the Guild bargain.

There were other times after hours, after 5:00 o'clock, that I walked up the street with them and talked to them about it too. I never did it at any of their homes but most of the time was the noon hour.

Q. And sometimes after 5:00 o'clock you would walk up the street with them? [227] A. Yes.

Q. And sometimes in some instances at their homes? A. No, never at their homes.

Q. But up the street or as they were sitting at their desks during the noon hour? A. Yes.

Q. You say you approached the six people besides yourself? A. Yes.

Q. Three of the six people signed, agreed with your contentions, and three did not? A. Yes.

Q. And the other five employees in the classified department you did not approach at all?

A. At that time.

Q. I mean with reference to this petition?

A. To this petition, no.

Q. You did not approach? A. No.

Q. Any of the other five in reference to it?

A. No.

Q. Do you recall any day that Mr. Tobin was sitting at his desk while you circulated this petition?

A. Mr. Tobin during the lunch hour came in the office and sat down and went out. He wasn't sitting

(Testimony of Leonard Lugoff.)

down there for work. It was during his lunch hour as well as the lunch hour for the [228] rest of us.

Q. What is the lunch hour?

A. Between 12:00 and 1:00.

Q. Between 12:00 and 1:00? A. Yes.

Q. Did Mr. Tobin go out for his lunch between 12:00 and 1:00?

A. Yes, he usually did. Sometimes he went across the street and finished his lunch in 15 or 20 minutes and came back in the office.

Q. Well, how many occasions would you say that he was sitting at his desk when you were circulating this petition?

A. To be frank with you, Mr. Palmer, when I started circulating the petition, Mr. Tobin was not in but during the circulation he came in. I never circulated it at the time that he was there. In other words, I didn't go in there with the idea of circulating it right under his nose. I was, you might say, caught in the act.

Q. How many times were you caught in the act?

A. Oh, I don't recollect. That happened consistently.

Q. Well, four or five times?

A. At least that.

Q. At least four or five times Mr. Tobin returned from his lunch while you were talking with some of the employees?

A. Yes. Now, have you reference to the first petition? [229]

(Testimony of Leonard Lugoff.)

Q. Yes, this first petition, Mr. Lugoff, I am still on that, perhaps too long, but I am still on it.

A. Well, the first petition now.

Q. This one that you have read?

A. I was figuring on the whole business. Now, this first petition I doubt whether Mr. Tobin was in the office when I was circulating it.

Q. At any time? A. Yes, I doubt that.

Q. To the best of your recollection he was not in?

A. No. In fact, Mr. Palmer, the first petition and that contract that I made out following was given to people and was given to them in such a way, for instance, that—you see the people that I contacted on this first petition and the contract were more afraid of their jobs than I was. There seemed to be a fear in the department that if the management caught them doing anything like that that they would lose their job, and on this first petition and the following contract, the petition was left in their hands and I walked away. There was nobody around. The signatures weren't obtained at the office, they were obtained at lunch time while we were eating lunch.

Q. At one of the restaurants, you mean?

A. Yes.

Q. That applies to both the petitions and——

[230]

A. The following contract.

(Testimony of Leonard Lugoff.)

Q. And that document which you referred to as a contract?

A. Yes. The reason I so state is there was a fear there, and personally I wasn't fearful.

Q. You did your very best, however, to cater to their fears?

A. Yes, because they feared their jobs were in jeopardy.

Q. You weren't afraid?

A. I didn't believe that, knowing you as well as I have known you, I couldn't believe that that fear was founded on anything but imagination.

Q. They all knew at that time that there was a Guild unit in the organization?

A. That is right.

Q. Functioning in the news room editorial department? A. That is right.

Q. And they had made contracts with the management?

A. They figured that this news unit, or this Guild unit upstairs was functioning because of the strike and nothing but the strike; in other words, through force. They figured that the Guild unit was in existence——

Q. Did any one of them tell you that?

A. No, but that was the way it was suggested to me; in other words, there was a fear and the only way you could explain that fear was that the Guild unit existed primarily because of the force they put back of the strike. [231]

(Testimony of Leonard Lugoff.)

Q. As a matter of fact, didn't some of them tell you that they were afraid of a strike, that they didn't want a strike?

A. No, not these people that I contacted. The people I contacted wanted this. They were dissatisfied with the wages they were getting, and with the working conditions in there. You see I confined my activities to people I knew wanted a change and at the same time as much as they wanted this change they were fearful of doing anything to let the management know what they wanted.

Q. You mean three of these people that you contacted were afraid to sign, they wanted to sign but they were afraid to sign?

A. That is right.

Q. You don't care to mention their names?

A. No.

Q. Those who——

A. No, they are still in the employ.

Q. —are afraid you say?

A. It is more or less in my mind as a trust.

Q. Those three are still in the Citizen-News employ?
A. That is right.

Q. In 1938 you had a conversation with Mr. Tobin in reference to low production?

A. Yes.

Q. Can you fix the approximate time in 1938 that that took place? [232]

A. About August 1st.

(Testimony of Leonard Lugoff.)

Q. About August 1st? A. That is right.

Q. That was at the end of the strike?

A. That was, yes, right at the end of the strike—no, that was just before the end of the strike, Mr. Palmer. I went on my vacation and when I came back the strike had already been settled and the people on strike were given a two weeks vacation and they were supposed to come back to work. Before I left on my vacation that hadn't been decided on.

Q. Was it August 1st when you left on your vacation?

A. It was two weeks or three weeks preceding August 22nd. Now, that may be July 30th.

Q. If it would be three weeks, it would be August 1st.

A. I went on a two weeks vacation and I came back and worked a week and was out of a job.

Q. Well, when you went on your vacation the strike was still on? A. That is right.

Q. When you came back the strike had been settled? A. That is right.

Q. Do you know for how long?

A. No, it may have been a week or I think it had been settled a week at the most. [233]

Q. It had been settled a week?

A. And none of the strikers though were back at the office, as I understand it, they were given a two weeks vacation.

(Testimony of Leonard Lugoff.)

Q. Now, immediately after you got back, was it, that you spoke to Mr. Tobin about low production?

A. I spoke to Mr. Tobin about the low production before I went on my vacation.

Q. Oh, before you went on your vacation?

A. Yes.

Q. Do you remember where that conversation was held? A. In his office.

Q. Was it the day you left on your vacation or a week or so before?

A. It was a few days preceding the day I left on my vacation.

Q. You and Mr. Tobin were sitting together in Mr. Tobin's office?

A. Yes. Mr. Tobin was sitting and I was standing at his desk. I came in to see him about my production.

Q. Relate the conversation that took place at that time.

A. I said, "Mr. Tobin, I am contemplating making a loan. I have to send my wife back east. It isn't imperative but we think it is necessary. I know that my production is low and I think it is mainly due to the strike conditions."

I said, "I need \$300 on this loan and if there is any possibility that you are going to fire me because of low [234] production," and, as I said, my production was low. My sales cost was a good deal higher than 25 percent, I think it was around 35,

(Testimony of Leonard Lugoff.)

maybe 40 percent, I said, "Let me know and I won't make the loan."

Mr. Tobin said, "There is nothing to worry about. Go ahead and make the loan."

Q. Was the strike still on at that time?

A. The strike was still on, yes, sir.

Q. Now, you don't have to answer this but did you make the loan through the credit union in the Citizen News?

A. No, there was no credit union at that time. I made it through the Bank of America.

Q. What were your earnings at that time when you were speaking to Mr. Tobin?

A. You mean my lineage or my actual earnings?

Q. Your actual earnings. What was your pay check?

A. My pay check was as low as \$15 a week.

Q. Then you got back from your vacation and when did Mr. Tobin first speak to you about leaving?

A. The Friday following the Monday that I came back.

Q. The Friday following the Monday you came back?

A. Yes.

Q. Where was that conversation held?

A. In Mr. Tobin's office.

Q. Did he send for you at that time? [235]

A. He did.

Q. Then relate that conversation.

(Testimony of Leonard Lugoff.)

A. He said, "Lugoff," he says, "I am sorry but I will have to let you go. We have taken the strikers back and we have got to cut expenses."

Q. Was there anything further said?

A. I said something further, Mr. Tobin didn't say anything further. I recalled what he told me two weeks previous and that I had got a \$300 loan on my shoulders with no chance of getting a job and he tried to tell me a man of my ability shouldn't have any hard time finding work.

Q. What did you say in reference to that?

A. I said, "Well, you are beating around the bush." I said, "You promised me that my job was secure. I went out and got a loan and now I am stuck."

He said, "Well, the best thing that I can advise you is to go and see Mr. Palmer."

I said, "Oh," to be frank with you, I said, "the hell with it. I wouldn't go over your head anyway." I said, "I have been here just about seven years and I haven't gone over your head yet," and I was pretty sore. I walked out of the office then and figured that I and the Citizen-News had parted company forever.

Q. Yes. Then you didn't change your mind?

A. Over the week end, my wife had already been sent back [236] east, I had that loan, the loan was spent and as often the case I on second thought, I got a little cool and started figuring it was to my

(Testimony of Leonard Lugoff.)

advantage to see whether I could get that loan off my shoulders. That was, Mr. Palmer, the main reason I came to see you on account of that loan. I was deeply worried about that. I never did get a loan before when the first week I couldn't figure a way of paying it.

Q. At the time that Mr. Tobin discharged you, you were not a member of the Guild?

A. No, sir.

Q. You had refused to join the Guild in going out on strike?

A. I refused to go out on strike.

Q. You stayed on the job? A. Yes.

Q. At that time you told Mr. Tobin that you were not a member of the Guild?

A. I don't believe the Guild was brought up as far as Mr. Tobin and I were concerned. It was a conversation about the promise of having a job after I got that \$300 loan.

Q. Did you ever prior to that conversation tell Mr. Tobin that you had been a member of the Guild?

A. I don't recollect at the present time that I told Mr. Tobin anything about my Guild affiliations, but there was quite a movement at the time that everybody in classified join [237] the Guild. There was no secret about it. We were very much confused. We thought we were in a new movement for white collared workers and we broadcast it to

(Testimony of Leonard Lugoff.)

everybody that we were members of a new organization.

Q. That was general around the plant?

A. Yes.

Q. At that time there was no fear entertained by anybody, was there?

A. No fears. Nobody realized just what the Guild was. I didn't realize what the Guild meant. It was merely a movement, a new organization with a new club house and something to be proud of.

Q. At the time the strike was called three out of four of the members of the classified department were members of the Guild? A. That is right.

Q. And no secrecy was maintained about their membership in the Guild? A. That is right.

Q. When in relation to the calling of the strike did you circulate this petition?

A. When in relation to the calling of the strike?

Q. Yes.

A. I didn't circulate any petition, Mr. Palmer, until after I had rejoined the Guild in 1939. [238]

Q. You had rejoined before you circulated that first petition? A. Yes.

Q. Now, after telling Mr. Tobin to hell with it, you did come up to my office?

A. Yes. I thought it over and in cooler moments I realized I was in a fix and I had to get out of it.

Q. That was on a Monday morning?

A. That was on a Monday morning?

(Testimony of Leonard Lugoff.)

Q. Mr. Tobin had spoken to you on the Saturday or Friday before? A. Friday.

Q. And the door to my office was open when you came up there?

A. I first went to Mr. Tobin. I said I didn't realize he had gone on his vacation that Monday and he wasn't in and I asked where he was and they told me he was on his vacation so then I went upstairs and I spoke to Dorothy Stone and she said I could go in to see you.

Q. The door was open and you just walked in?

A. I walked in. I don't remember whether the door was open or whether it was closed. I know she gave me permission to come in.

Q. You say Mr. Young was in there at that time? A. Yes, sir.

Q. Did you see Mr. Thompson around the office at that time? [239]

A. No. I distinctly remember getting permission from Dorothy Stone. I didn't see Mr. Thompson at all.

Q. You don't know whether Mr. Thompson was in there when you came in or when you went out?

A. He may have been there when I went out. I know he wasn't there when I went in.

Q. Was the door open during the conversation that took place? A. That I don't remember.

Q. All right. Did you open the conversation?

A. Yes.

(Testimony of Leonard Lugoff.)

Q. What was the first thing you said?

A. I said, "Mr. Palmer, I have been fired by Mr. Tobin last Friday and I would like to speak to you about that firing."

Q. What did I say?

A. You said, "Go right ahead," and you indicated to Mr. Young the conversation was to be——

Mr. Sokol: Would it be agreeable if you would have Mr. Thompson step out of the room at this particular time?

Mr. Palmer: Yes. Mr. Thompson, will you kindly step outside?

Q. (Mr. Palmer) All right. Go ahead.

A. Then I went on with the conversation. I said, "I have been working in classified for the past five years." It was five years at that time, "And up to the time of the strike I [240] have been bringing in enough business to warrant my employment. From the time of the strike until the present time——" That was the time I came up to see you—"my advertising production has taken a decided drop primarily because of the strike."

I said, "At the time of the strike I was a member of the Guild but gave up my card. My main reason for coming up to see you is that I talked over before going on my vacation, two weeks previously, my low production with Tobin and told him that I contemplated a loan and that if my job was secure I was going ahead with it and if it weren't on account of my low production, that I would forget the

(Testimony of Leonard Lugoff.)

loan, and he told me to go ahead and get the loan, that there was nothing to worry about."

Q. This is what you were telling me at the time?

A. I was telling you that, yes.

You listened to that conversation and then I said, "Now, I have got a \$300 loan on my shoulders with no job." I said, "I wouldn't have incurred this loan if Mr. Tobin hadn't made me believe that I still would have a job." I said, "I know there is no legal reason why you should be made to pay that loan but I am in a position where I don't know how I am going to pay it back and I certainly wouldn't have had it if it hadn't been for Mr. Tobin's say so."

At that time you thought a minute and said, "Do you want your job back or do you want us to take over the loan?" [241] So I told you I had to go to work. You then told me to go downstairs and Mr. Young and you would talk it over and let me know in an hour.

That was the only conversation. You told me to go ahead, you listened to what I had to say, you asked me whether I wanted my job back or the loan taken care of, and then you told me to go down stairs and wait for your reply while you talked it over with Mr. Young.

Q. Prior to my asking you if you wanted us to pay the loan or wanted your job back, had you asked us to pay the loan?

A. I merely suggested in the course of the conversation that I had with you that there was a

(Testimony of Leonard Lugoff.)

moral obligation, there was no legal obligation. You came out spasmodically or voluntarily out of the goodness of your heart and said you wanted to know if I wanted you to take over the loan. I certainly appreciated that.

Q. When you were discharged did you receive any severance pay? A. Yes.

Q. How much was that, if you recall?

A. I think it was computed on the average of four weeks representing four years at \$14 a week.

Q. To the best of your recollection, your severance check at that time was \$56?

A. \$56, I think it was. With my week's pay it made it, [242] I think the whole thing came to around sixty some dollars.

Q. When you were discharged in March, 1940, how much was your severance pay check?

A. I don't recollect. It was computed on the basis of so many years at \$24.

Q. Have you any idea how much it was?

A. Around \$200.

Q. Did you ever offer to return the severance pay check that you received in March, 1940, to the Citizen-News when asking for your job back?

A. The whole matter was in the hands of the Guild. The Guild took up my reinstatement. It wasn't favorably received. The management didn't seem to be interested in hiring me back or what became of my severance check. I might state at the

(Testimony of Leonard Lugoff.)

time of firing in 1938 that I was handed a severance pay check which I cashed right away and when I came back to work for the Citizen-News it was taken care of in the form of a loan. Mr. Ringwald knows that.

Q. You returned that first severance pay check when you returned?

A. I did not return it, Mr. Palmer, that is, I did not return it the next day. I had already spent the money and when I came back just two days later it was gone and I had to reinstate the loan.

Q. You borrowed money? [243]

A. To pay it back.

Q. To pay back the severance pay check at that time? A. Yes.

Q. At this meeting that the Guild had with Mr. Sargent, did you hear anybody make an offer to return your severance pay check in connection with the demand that you be reinstated?

A. I don't recollect that, but to my mind it wasn't important because I knew if I got reinstated that they would take care of that in a similar manner as they took care of the first severance pay check; in other words, the first severance pay check was gone and there was no difficulty to float a loan to get that back.

Q. You believed that if you were reinstated the last time that the Citizen-News would loan you the money to repay the check?

A. Well, I had the money at the time but I said if I hadn't had it, that they would be glad to do it.

Q. You had complete confidence in that?

A. There was no question in my mind that it wouldn't be handled the same way if I were out of money.

Q. During the conversation in the presence of Mr. Young and myself, was the strike mentioned at all, Mr. Lugoff?

A. Yes, it was.

Q. In what connection?

A. I mentioned that I gave up my union card when the strike [244] first started. I also mentioned that my lineage took a decided drop from the time the strike started until the duration of the strike.

Q. Was the strike mentioned in any other connection?

A. Not that I recollect.

Q. You are positive that it was not?

A. I don't recollect any other way the strike was mentioned. I was mainly, as I said, mainly interested in trying to protect that \$300.

Q. As a matter of fact, Mr. Lugoff, did you not at that time state that it was unfair on the part of the management to take back five employees whom the management contended it did not need, and let you go, who was earning at least a part of what you were receiving?

A. As I said before, Mr. Palmer, I didn't recollect that. If I had recollected it I would have said so.

(Testimony of Leonard Lugoff.)

Q. But it might have been said, Mr. Lugoff?

A. There is a lot of things that might have been said. I recollect pretty plainly just what occurred there. I am pretty sure that I didn't make any statement like that.

Q. But you are not positive that you made no statement like that?

Mr. Sokol: I think that has been asked and answered.

Mr. Palmer: Well, he says he is pretty sure and I want to know if he is positive. [245]

The Witness: I am positive that I didn't make that statement.

Q. (By Mr. Palmer) Mentioned that at all?

A. That is right.

Q. Did you know about the terms of the strike settlement at that time?

A. No. I was not interested in the strike settlement agreement. I didn't know any of its terms.

Q. You made no inquiry?

A. Made no inquiry.

Q. You did see the employees who had been discharged about the premises?

A. Oh, yes. I may add that the only time I heard about the strike settlement agreement was in the Guild negotiations and they seemed to want to get Helen Brichoux and Karl Schlichter protected in some other way, that is about all I heard of the strike settlement agreement in the plant when I attended negotiations.

(Testimony of Leonard Lugoff.)

Q. When you got back you saw Roger Johnson there? A. No. They were on vacation.

Q. All on vacation? A. Yes.

Q. Later you saw them come back?

A. That is right.

Q. Yet you knew nothing about the circumstances under which [246] they were——

A. I knew that they were there awaiting approval of the National Labor Relations Board in Washington. I didn't know anything about what the strike settlement agreement included, though. I didn't know the form it was drawn up in.

Q. You did know that much?

A. I did know that.

Q. You did know that five employees were——

A. That you took back the five employees.

Q. —awaiting a decision of the National Labor Relations Board?

A. Yes. I think everybody in the *Citizens* knew that. That was common knowledge.

Q. That was common knowledge around the institution? A. Yes.

Q. Now, this notice that Mr. Young gave you at the time he said you were on probation until January 1, 1939? A. That is right.

Q. Was any statement made to you at that time why the date was fixed as January 1, 1939?

A. No, there wasn't. I was under the impression that it was merely a production probation, if I could raise my production by January 1, 1939, fine and dandy; if I couldn't I was going to be out.

(Testimony of Leonard Lugoff.)

Incidentally, I doubled my production from the time I [247] went back to work and held it fairly consistently all the time that I was there up until March, 1940.

Q. You doubled your production. Did you double your pay checks?

A. My pay check wasn't computed on the production angle; in other words, I doubled the amount of money I was making for the Citizen-News but my pay checks showed very little difference. It showed about \$5 or \$6 or maybe \$7, maybe \$10 a week gained, but it didn't give a picture of what I was doing on the territory so far as bringing in business that the production did. I might say I more than doubled the production.

Q. How long after this reinstatement was it that you went to Mr. Young again in reference to wages?

A. Well, it was practically a year later.

Q. That was in 19——

A. In other words, Mr. Palmer, I engaged in no activities at all while I was engaged on a probation basis. I engaged in no outside activities, that is, such as Guild activities or anything else while I was on probation. When I was taken off of probation I started thinking again.

Q. Did anybody tell you that you were taken off of probation?

A. Well, I waited for somebody to inform me after January 1, 1939, and then I took it for granted

(Testimony of Leonard Lugoff.)

that I was off of [248] probation when nobody said anything to me. For a time I was going to ask Mr. Tobin or Mr. Young but I thought it was kind of a foolish gesture.

Q. All right. You went in to see Mr. Young in 1939 about a year later? A. That is right.

Q. With Mr. Allen? A. That is right.

Q. What is his first name? A. Philip.

Q. Philip Allen. Did he work in the classified department also? A. Yes.

Q. Was that at your request or Mr. Young's request?

A. It was at my request, in fact, I had to drag him in.

Q. I meant was that interview held with Mr. Young at Mr. Young's request or at yours?

A. No, it was Mr. Young's. I didn't know what I was going to talk to him about. I made an appointment with Mr. Young a week previous, I might say, that he was busy and he wouldn't see me and then a week later I made another appointment and in the meantime I got ahold of Mr. Allen and told him what I was going to do and took him with me.

Q. Was anyone besides Mr. Allen and yourself present? A. No. [249]

Q. With Mr. Young at that time? A. No.

Q. To the best of your recollection what was said by anyone of the three, each of the three?

(Testimony of Leonard Lugoff.)

A. Well, I based my assumptions on generalities that some of the outside men weren't making any guarantees, that they weren't working under any guarantees, they were working under commissions, so when commissions got bad on the territory we suffered and not the company and I gave Mr. Young my idea that all employees should be working under a guaranteed living wage, which we weren't. I told him that unions usually came in existence because of dissatisfaction among employees about working conditions and wages.

Mr. Allen took up the fact that the amount of money he was making, with that amount he couldn't make a presentable appearance. His suit was worn out and he didn't have enough money to buy another one and his was very personal opinions why he should have a guarantee.

Mr. Young at that time told us both to go out and write what we had and he would pass on it. He didn't make any comment outside of that.

If Mr. Young has kept his correspondence at all he has my letter or my statement on file there. I didn't keep a duplicate of it.

Q. You and Mr. Allen then did go outside of the office? [250]

A. I didn't wait for Mr. Allen to do anything, I went ahead the same day and wrote it out and handed it in that night to Mr. Young. I don't know

(Testimony of Leonard Lugoff.)

whether Mr. Allen ever did hand anything in. I didn't question him after that.

Q. But you did write out a statement and hand it to Mr. Young? A. I did. I handed it in.

Q. To Mr. Young and suggested to Mr. Young the scales of pay that you thought fair?

A. The only thing I suggested to Mr. Young was that he pay people in classified or people on the outside a living guaranteed wage.

Q. You made no mention as to amount at all?

A. No, whether it was \$19, \$18, or \$20. In fact, I was surprised when he went up to \$24. I had in mind at that time the same scale as the girls, the girls were getting a guarantee of \$22.50 but I didn't mention that.

Mr. Palmer: Mr. Reporter, will you mark this document Respondent's Exhibit 1 for identification.

(Thereupon, the document referred to was marked as Respondent's Exhibit 1, for identification.)

Q. (By Mr. Palmer) I show, Mr. Lugoff, a document marked for reference purposes as Respondent's Exhibit No. 1 for identification and ask you to disregard the pencil notation reading "\$24 per week combined territory," and ask you if you have ever seen that document before? [251]

A. Do you mind if I read it?

Q. No, not at all.

A. I haven't seen it for a long time.

Q. The answer is what?

(Testimony of Leonard Lugoff.)

A. Yes, I wrote that.

Q. What did you do with it after you wrote it?

A. Gave it to Mr. Young.

Q. Was that in connection with this conversation which you have just been relating?

A. Yes.

Mr. Palmer: I ask now that it be admitted as Respondent's Exhibit 1.

The Witness: Now, those notations are not my notations. This is my name here. \$24 a week has nothing to do with it. And this here has nothing to do with that.

Mr. Sokol: What is that?

Mr. Palmer: The words in writing "\$24 per week combined territory," is not in Mr. Lugoff's writing. "Letter to Young," is that your writing or not? A. It may be, I don't know.

Q. You don't know?

A. No, that isn't my writing. That is immaterial.

Q. "On commission basis," interlineated in pencil? A. Yes.

Q. In manuscript writing, is that your writing, reading, [252] "On Commission basis?"

A. Yes.

Trial Examiner Whittemore: Is there any objection?

Mr. Sokol: No objection.

Trial Examiner Whittemore: It is received.

(Thereupon, the document heretofore marked for identification as Respondent's Exhibit No. 1, was received in evidence.)

(Testimony of Leonard Lugoff.)

RESPONDENT'S EXHIBIT 1

(Letter to Young)

Classified salespeople of the Citizen News are at the present time working under conditions where they are not guaranteed a minimum living wage.

Base pay and commissions on lineage run make up the wage as per example:—

No. 1	Territory	—\$15	base	pay	plus	1½¢	per	line
No. 2	“ “	\$12	“ “	“	2¢	“ “		
No. 3	“ “	\$10	“ “	“	2¢	“ “		
No. 4	“ “	\$10	“ “	“	1½¢	“ “		

Working under the above commission when conditions are good an ordinary wage is earned as per example 1936-1937 an average wage of \$34 was earned by No 4 territory. When conditions are fair as at the present time an ordinary wage of approximately \$24 is earned and any slump due to conditions outside of Salesman scope can lower his weekly earnings to \$17, \$18, \$19 a week for a week or so. For example No 4 territory dropped from \$23 before June 3 1939 to \$18 after the 2 week vacation was over.

All of the classified people on the sales staff of the Citizen News have been with the concern long enough to prove their ability to sell classified advertising for the paper.

My personal view on the above matter is that any concern has a normal obligation to pay all their

(Testimony of Leonard Lugoff.)
employees a Guaranteed Living Wage and in case of salespeople working steady on commission basis where the salary fluctuates a Minimum Guaranteed Living Wage.

[Written in pencil in margin]: \$24.00 per week combined territory.

Q. (By Mr. Palmer) You did at that time suggest a wage scale of \$24 a week.

A. I did not suggest anything but a living guaranteed wage. It says right in there, Mr. Palmer, just what I suggested.

Q. I should frame the question differently. What did you mean when you said, "When conditions are fair as at the present time an ordinary wage of approximately \$24 is earned, and any slump due to conditions outside of salesmen's scope can lower his weekly earnings to \$17, \$18, \$19 for a week or so"?

A. I meant to say that under ordinary circumstances we never made a very high wage, that when conditions were good we just made an ordinary guaranteed living wage but when conditions were bad we made less than a guaranteed living wage and I thought that the concern should take the brunt of that and was morally responsible to see we made a living guaranteed wage at all times.

Q. Did you mean by that that normally you earned about \$24 [253] a week?

A. No, I meant to state that at no time did we make an exorbitant wage, that if we were making,

(Testimony of Leonard Lugoff.)

for instance, at times an exorbitant wage, then we could suffer the lapses when we didn't make such a good wage, but the way we were paid at all times when conditions were good, we just made an ordinary fair wage, then when conditions got bad we didn't make that.

Q. You were not at that time earning \$24 a week?

A. I was at that time earning around \$17, \$18 a week. [254]

Q. After you presented this document to Mr. Young, did you have any further conversation with him?

A. No, sir.

Q. None whatsoever?

A. None in relation to that that I can recollect now.

Q. Did you take this in to him personally?

A. Yes.

Q. And he made no comment on it whatsoever?

A. I took it to him and I said, "Mr. Young, this is what you asked for in relation to our conversation earlier in the day," and left it there.

Q. Nothing further was said? A. No.

Q. Did you go back at any time after that?

A. It wasn't necessary to go back. The next Monday Mr. Young or Mr. Tobin had posted on the bulletin board in classified just what the management had given us. [261]

Q. During the time of your conversation was the sum of \$24 a week mentioned?

(Testimony of Leonard Lugoff.)

A. No. In fact, I was surprised after they gave \$24, very much surprised.

Q. Did Mr. Young make any comment about a guarantee at all at the time?

A. No, he didn't make any comment at all. As I recollect it, he told us to tell our story. I told mine, Mr. Allen told his. He told us he would appreciate it if we would write it all out and bring it in to him and he would pass judgment on it.

Q. As a matter of fact, did not Mr. Young tell you that the amount of the guarantee did not bother him, but it was the question of earning it and that if he made the guarantee he would expect those receiving it to earn it?

A. I don't recollect Mr. Young saying anything like that. As I said, we didn't take up the amount of guarantee at any time.

Q. You stated yesterday, I believe, that following that guarantee for only two weeks in a period of 38 weeks you made your guarantee; is that correct? A. That is right.

Q. And that the balance of the time you made less than your guarantee?

A. That is right. Well, I didn't get less, I made less. [262] If that is what you mean to bring out.

Q. Yes, you made less? A. Yes.

Q. Your earnings computed on the basis set forth—— A. Yes.

Q. —yielded less than \$24. A. Yes.

(Testimony of Leonard Lugoff.)

Q. Now, you stated, Mr. Lugoff, yesterday, did you not, that from December, 1939, until the time of your discharge in March, 1940, your earnings gradually increased?

A. I think if you will examine the monthly——

Q. I asked you if you made that statement?

A. Yes. May I ask a question again, Judge?

Q. Yes, certainly.

A. I think I made a statement yesterday that my production increased.

Q. Well, if your production increased, your earnings increased? . A. That is right.

Q. Is that right?

A. Production would be more apparent to show, it would show the increase a little bit more than my earnings would.

Q. I will ask you if on November, for the week ending November 3, 1939, you did not earn \$24.01, one cent over your guarantee? [263]

A. That is right. I am taking your word for it. I haven't got those week by week figures in my mind.

Q. I am asking you if for the week ending November 10th, your earnings did not amount to \$23.33?

A. Well, to be frank with you, Judge, I don't know offhand just what my earnings did amount to. I haven't got them here with me.

Mr. Sokol: The record would be the best evidence.

(Testimony of Leonard Lugoff.)

Q. (By Mr. Palmer) You don't know whether that is true or not?

A. We were getting \$24 guarantee at that time. I kept a record, yes, I think.

Q. Where is your record then, the record on which you base your statement that from the latter part of 1939 up until the time of your discharge that your production gradually increased?

A. My production gradually increased?

Q. Yes.

A. I think Mr. Sokol has my records.

Q. He has your records? A. Yes.

Q Now, I ask you at this time if your production increased would that not increase your earnings?

A. There would be a tendency to increase it but if you are going to show the improvement of my territory between the time [264] of December 1st and March 30th, it would be more apparent by the lineage production.

Q. However, it would be reflected in increased pay checks, would it not? A. Very slightly.

Mr. Sokol: Do you want these records?

Mr. Palmer: Yes.

Mr. Sokol: I will have them marked for identification as Board's Exhibits 20-A and -B.

I may say, Mr. Examiner, this production record is on the back of the original letter of discharge of March 30, 1940, so I will just have that marked Board's exhibit next in order.

(Testimony of Leonard Lugoff.)

(Thereupon, the documents referred to were marked as Board's Exhibits 20-A and 20-B, for identification.)

Q. (By Mr. Palmer) I show you a document marked Board's Exhibit 20-B, for identification, Mr. Lugoff, and ask you if you can identify that?

A. Yes.

Q. I didn't get your answer. A. Yes.

Q. What is that?

A. That is the comparison of lineage production on the different outside territories, the amount of lineage run for the month of March, 1940. [265]

Q. Compiled from what, Mr. Lugoff?

A. Compiled from Mr. Tobin's report.

Q. By you. Is that in your own handwriting?

A. By me, yes, sir.

Mr. Palmer: I ask that that be admitted as Board's Exhibit 20-B.

Mr. Sokol: Do you want that in as your exhibit? That would be Respondent's Exhibit 2.

Mr. Palmer: Well, it has already been marked.

Mr. Sokol: Well, I will offer it as Board's Exhibit 20-B.

Trial Examiner Whittemore: Apparently there is no disagreement, so it may be received as Board's Exhibit 20-B. At this time do you want to offer 20-A, as well as the reverse side of that?

Mr. Sokol: Yes.

Trial Examiner Whittemore: It is received.

(Therefore, the documents referred to heretofore marked "Board's Exhibits 20-A and 20-B," were received in evidence.)

(Testimony of Leonard Lugoff.)

BOARD EXHIBIT 20-A

Week of	Ads	Lines	Week of	Ads	Lines
1939					
Jan 7	106	— 619	Sept 2	130	— 594
14	119	— 662	8	106	— 621
21	131	— 783	16	123	— 582
28	134	— 792	23	107	— 515
Feb 4	150	— 865	Sept 29	93	— 476
11	136	— 710	Oct 7	119	— 566
18	147	— 811	14	113	— 602
25	150	— 784	21	117	— 553
Mar 4	142	— 726	28	130	— 645
11	161	— 794	Nov 4	150	— 636
18	168	— 806	11	159	— 682
25	167	— 767	18	167	— 712
Apr 1	165	— 772	25	160	— 1227
8	141	— 714	Dec 2	163	— 721
15	146	— 779	9	153	— 614
22	168	— 881	16	133	— 660
29	166	— 796	23	129	— 612
May 6	187	— 871	30	108	— 507
13	179	— 785	Jan 6	101	— 537
20	177	— 823	13	110	— 599
27	159	— 711	20	104	— 490
June 2	139	— 710	27	140	— 581
(2 weeks vacation)			Feb 3	139	— 585
24	133	— 524	10	130	— 560
30	129	— 459	17	134	— 607
July 7	102	— 525	24	129	— 518
15	98	— 545	Mar 2	109	— 510
22	130	— 640	9	120	— 533
29	163	— 845	16	129	— 525
Aug 5	133	— 804	23	159	— 647
12	109	— 833	30	140	— 713
19	101	— 493			
26	128	— 572			

(Testimony of Leonard Lugoff.)

BOARD EXHIBIT 20-B

LINEAGE & ADS FOR MAR 1940
OUTSIDE SALESMEN

	<u>Ads</u>	<u>Lines</u>
Reid	1088	11,459
P. Allen	417	2,212
M. McKellar	242	2,465
L. Lugoff	600	2,892

Q. (By Mr. Palmer) I show you the document marked Board's Exhibit 20-A, and ask if you will state, please, what that document is?

A. It is my production record from January, by weeks of ads and lines from January 7, 1939 until March 30, 1940.

Q. When did you compile that document?

A. I kept a record at all times of the lineage that I carried. I compiled it week by week and at the end of my firing or at the time of my firing I merely took it from the slips of [266] paper that I had and put it on this.

Q. Have you the slips of paper in your possession? — A. Not here.

Q. Have you them at home? A. Yes.

Mr. Palmer: I will ask that the witness be requested to bring the slips of paper when we meet Monday morning at 9:30.

Trial Examiner Whittemore: Well, we meet this

(Testimony of Leonard Lugoff.)

afternoon and we will meet tomorrow morning at 9:30.

Q. (By Mr. Palmer) When did you compile the figures on Board's 20B, Mr. Lugoff?

A. I compiled that from a notation that I had from a party who had access to the March figures.

Q. You compiled that sometime after March?

A. Yes.

Q. Someone in the classified department?

A. That was handed to me.

Q. The party obtained the figures for you?

A. Yes, sir, that is right.

Q. And you rewrote it in your own handwriting?

A. Yes.

Q. Have you the original document from which this was compiled?

A. No, not that I recollect, I don't think so.

[267]

Q. May I request you search and if you have them, bring them at the same time you bring the original documents on the other?

A. If I have them I will be glad to.

Mr. Sokol: I am going to object that the original is in the handwriting of some particular employee. I wish Mr. Palmer would refrain himself from probing into some of these matters.

Mr. Palmer: I am not trying to probe into any matter that involves an individual outside of the individuals involved here, but I am trying to probe into facts.

(Testimony of Leonard Lugoff.)

The Witness: I might state, Mr. Palmer, that these figures taken from slips of paper computing the week lineage, was originally checked with Mr. Tobin's report which was available in his desk at all times to see whether our lineage was what it should be. In other words, our lineage was computed, or our commission was computed on the basis of lineage and we used to check that to see whether it was O.K.

Q. Now, the third week of December, the week ending December 2, 1939, according to your figures you produced 163 ads totaling 721 lines; is that correct?

A. Well, the basis that I made saying that my lineage increased, it steadily increased from December, 1939, until March of 1940, that was based on the month to month; in other words, you take this December 2nd, that was the Saturday [268] of the week——

Q. I will give you permission to explain if you will first answer the question. If that is correct for the week ending December 2nd, your production according to your figures was 163 ads and 721 lines?

A. That is right.

Q. Now, I will pause while you make any explanation that you wish of your statement.

A. In my computation of the months of December, January, February, and March, I computed only the lineage that ran in the month of December, in the month of January and the month of February and the month of March.

(Testimony of Leonard Lugoff.)

Q. Yes.

A. This 721 includes practically all of November. You see what I mean?

Q. Yes.

A. It is 7 days ending December 2nd, and most of those six days—that is with six days in November.

Q. Now, the month of November, your lineage was much heavier than the lineage in the month of December?

A. It is always. It is the periodical fluctuation. It includes your Thanksgiving advertising and you will notice if you compare your records of November, 1938, you will find the same bulge in lineage that you find in 1939.

Q. The lineage dropped off November to December? [269]

A. Yes.

Q. Take the month of January then, did the lineage for January increase or decrease over the month of December?

A. May I ask Mr. Sokol something?

Q. Yes.

A. Mr. Sokol, I gave you the figures that I had on the back of a letter where I had computed the lineage by the month and showed according to my figures a decided increase or a steady increase. It was a letter that you had written to me asking me to come to the office.

Mr. Sokol: Well, we can get that after lunch.

(Testimony of Leonard Lugoff.)

Trial Examiner Whittemore: Yes. I think this is a good point to adjourn.

We will recess until 1:30.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 1:30 p.m.) [270]

(Whereupon, at 1:30 o'clock p. m. the hearing resumed, pursuant to recess.)

Trial Examiner Whittemore: The hearing will please come to order.

Mr. Sokol: With Mr. Palmer's permission I want to ask the witness a few questions. Is that agreeable?

Mr. Palmer: Yes.

LEONARD LUGOFF,

a witness called by and on behalf of the National Labor Relations Board having been previously duly sworn, was examined and testified further as follows:

Re-Direct Examination

(Continued)

Q. (By Mr. Sokol) Mr. Lugoff, have you been employed since March 30, 1940?

A. Yes, I have.

Q. When did you to work?

A. About May 1, 1940.

Q. Where? A. Lincoln Heights Review.

Q. That is a newspaper?

A. That is a throw-away publication.

(Testimony of Leonard Lugoff.)

Q. Was that a permanent or temporary job?

A. Well, it is a temporary job.

Q. What do you do?

A. I have been developing classified. They did not have [271] any classified on the paper when I started and I have been developing it.

Q. Have you ever since that time made anything comparable to \$24 a week?

A. No. In fact, I have been financing myself for the past few months that I have been out on the paper and have made very little.

Mr. Sokol: That is all.

Do you want your job back at the Citizen-News?

A. Yes.

Re-Cross Examination

Q. (By Mr. Palmer) When you said the job on the Lincoln Heights Review is a temporary job, what did you mean, Mr. Lugoff?

A. It has developed into a temporary job. I took it with the idea that I might make something out of it but the way conditions are now I am not able to make anything out of it.

Q. Well, it is temporary only because of your own election; is that it?

A. It is temporary because I am not making a living wage out of what I make.

Q. It is temporary while you are looking for something better; is that it? A. Yes.

Q. When you say you are earning nothing comparable, are [272] you on a commission basis?

(Testimony of Leonard Lugoff.)

A. I am on a 40 per cent commission.

Q. And you lose money on that?

A. Well, when I said I lost money, I am financing myself. The first couple of months that I was on the job I lost money. Now, I am making a profit, a small profit, but the profit is so small that I cannot pay my rent, light, food, and necessary expenses.

Q. You got 40 percent of every ad that you sold, Mr. Lugoff?

A. No, I got 40 percent of every ad that I collected for.

Q. You had to do the selling and the collecting?

A. That is right.

Q. Did you sell some ads?

A. Yes, I was very fortunate in selling a lot of ads.

Q. You sold a lot of ads?

A. A lot of ads.

Q. What about collecting them?

A. It was not so good.

Q. What percentage of the ads that you sold did you collect?

A. May I ask a question, Mr. Palmer?

Q. Yes.

A. I don't see where this ties in with the Citizen-News.

Mr. Sokol: I haven't objected. You just answer the question and it is up to me to object.

The Witness: I beg your pardon. I didn't understand [273] that. What was that question again?

(Question read by the reporter.)

(Testimony of Leonard Lugoff.)

The Witness: About 50 percent.

Q. (By Mr. Palmer) Then you did earn some money?

A. Oh, naturally, I earned some money.

Q. About how much?

A. Is there any certain month that you want the figures for?

Q. Yes. You started in May. How much did you earn in May?

A. I earned in May exactly—I will tell you exactly what I earned, Mr. Palmer.

Q. Yes.

A. If you are very much interested, I am proud to know that you have an interest in what I am doing. In May I turned into the company \$51.92. Of that I got 40 percent.

Q. That is for the month of May?

A. Yes.

Q. How did you do for the month of October, we will say?

A. In the month of October I turned in—there is a little lap-over here, part of the collections were made the 1st and 2nd and 3rd of November, \$228.

Q. Of that you got 40 percent?

A. Of that I got 40 percent.

Q. \$88? A. That is right.

Q. Now—— [274]

A. I might say in regard to that, I paid my own expenses.

Q. You had no automobile allowance you mean?

(Testimony of Leonard Lugoff.)

A. There was no allowance.

Q. How much for September? A. \$206.

Q. August? A. \$168.72.

Q. July? A. \$144.32.

Q. June? A. \$121.76.

Q. Is there any difference between that territory and the territory that you worked on in Hollywood?

A. The difference is this: That I was confined in Hollywood to a certain territory that had not only myself working it but the girls working it and Mr. Reid covering part of it and a lot of the accounts being—or some of the accounts, you might say, being placed downtown. Outside of that there was no difference.

Q. Over in this territory you had no competition on your paper? A. No.

Q. You could go wherever you wished?

A. Yes, I could go wherever I wished. I got credit on everything that came in. I billed it up and everything [275] that came to the paper on classified I got credit for.

Q. You were the only solicitor in the paper?

A. Only classified solicitor.

Mr. Sokol: Is that a weekly?

The Witness: It comes out twice a week.

Mr. Sokol: Free, is that it?

The Witness: Yes.

(Testimony of Leonard Lugoff.)

Q. (By Mr. Palmer) Now, after Mr. Young and Mr. Tobin had set up a minimum guarantee of \$24, Mr. Lugoff, you said that you composed a contract similar to a contract on the Evening Herald?

A. That is right.

Q. Have you a copy of that contract?

A. I think so.

Q. After you composed that, what did you do with it?

A. The reason I composed that copy, Mr. Palmer, was that I wanted to show the people that I was contacting in classified something concrete; in other words a petition by itself didn't mean anything to them. I had fallen down on that. So I got the idea of putting in form a contract showing salaries for the phone room, salaries for the outside, revising territories and making suggestions on what I thought would bring more income into each of the respective persons' hands.

Q. How many employees did you show that to?

A. The same number that I showed the first petition to. [276]

Q. Six besides yourself?

A. Yes, or I might say five or six, I don't remember exactly.

Q. You showed that under similar conditions, you handed it to them?

A. Yes, and let them peruse it at their own free time.

(Testimony of Leonard Lugoff.)

Q. And talking with them about it at luncheon?

A. Yes.

Q. And places where Mr. Tobin wouldn't see them talking with you about it, is that right?

A. That is right.

Q. What did you ask these employees to do about this contract?

A. The contract was merely something concrete. I just asked them to read it over and I said, "If we get the Guild to act as a bargaining agent for us, this is a sample of what we can ask for and it will benefit everybody in the classified."

Q. You were asking the members to designate the Guild as bargaining agent to endeavor to secure that contract; is that it?

A. Not that particular contract. That was merely an example of what we could ask for. I showed it because I was trying to sell something that wasn't concrete before, that was just in my mind and I put it in writing, thinking it was a little bit easier to sell something that was concrete. [277]

Q. How did you come out in selling that?

A. I still was the same place I started after the first petition.

Q. You received while working under Mr. Tobin call sheets, did you not, Mr. Lugoff?

A. That is right. For quite a long while we had to put down the list of calls we made daily and we did that for I imagine over a period of two years at least.

(Testimony of Leonard Lugoff.)

Q. You filed a detailed report of the calls that you made with Mr. Tobin? A. Yes.

Q. But as against that did not Mr. Tobin give you lists at regular intervals and calls that he wanted you to make? A. He did.

Q. Did you always make those calls?

A. To the best of my ability.

Q. To the best of your knowledge did you always make them?

A. The reason I said to the best of my ability, Mr. Palmer, is because there was a certain amount of routine work to do on a territory.

You had to service accounts besides getting new accounts and to the best of my ability I made these calls after servicing the accounts on my territory.

Q. Did you make the calls that Mr. Tobin requested you to make? [278]

A. Practically all the calls, yes.

Q. Do you recollect any calls that you did not make that he asked you to make?

A. Yes, there were calls. As I said, there was a certain amount of work to be done on the territory servicing accounts and there were times when he gave me calls that I didn't make all of them.

Q. You mean that you didn't have time to make them?

A. That is what I am trying to insinuate.

Q. Well, did you on August 16th make a call on an apartment house at 1738 El Cerrito Place as requested by Mr. Tobin?

(Testimony of Leonard Lugoff.)

Mr. Sokol: What year?

Mr. Palmer: 1939.

Mr. Sokol: Just a moment, I object to that. There is no allegation in the Answer that the man was discharged for that reason, for the reason that he didn't make the call.

Trial Examiner Whittemore: Well, I will permit the witness to answer this but I suggest that there can't be a great deal of weight in it if you are just going to pick a date and names out of the air.

Mr. Palmer: I would like to ask the witness in reference to his work for the month of August, 1939.

Trial Examiner Whittemore: Well, you are offering that in support of your claim of non-production on the part of the witness, is that it? [279]

Mr. Palmer: Yes, your Honor. It relates to non-production.

Trial Examiner Whittemore: All right. Just make it as brief as you can.

Q. (By Mr. Palmer) Mr. Lugoff, the number of calls that Mr. Tobin asked you to make never exceeded six, did they?

A. Oh, yes. Yes, they sometimes were around six, sometimes he gave me calls to cover in an entire week.

Q. Yes, but I mean for any particular day they never exceeded six?

A. That may be true, I don't recollect that.

(Testimony of Leonard Lugoff.)

Q. And in some days there were as low as three calls that he requested you to make?

A. I imagine that was so. I don't recollect—

Q. Yet on many of those days you did not make any of the calls that he requested you to make?

Mr. Sokol: I object to that as calling for the conclusion of the witness as to any of those days.

Trial Examiner Whittemore: I will overrule the objection and you may answer.

The Witness: That I deny.

Q. (By Mr. Palmer) Your testimony is that you always made some of the calls? A. Yes, sir.

Q. And your report sheets would show you whether or not you [280] made the calls?

A. Yes, sir.

Q. Which Mr. Tobin—

A. My report sheets would show it but those calls, personally I don't see—those calls were usually sometimes handed back to Mr. Tobin, sometimes not handed back and thrown in the waste basket. I don't know how you got hold of those calls. I certainly don't remember myself. There was no specific mention on the report that they were particular calls that Tobin gave me.

Q. If you made the calls, however, your report sheets given to Mr. Tobin would show that you made the calls, would they not?

A. Yes, that is right.

(Testimony of Leonard Lugoff.)

Mr. Palmer: May this be marked Respondent's Exhibit 2 for identification?

(Thereupon, the document referred to was marked as Respondent's Exhibit No. 2 for identification.)

Q. (By Mr. Palmer) I show you document marked Respondent's Exhibit 2 for identification, Mr. Lugoff, and ask you if you can tell us what that document is.

A. That is a list of calls I made August 16th, it looks like, 1939.

Mr. Palmer: May I have this document marked Respondent's Exhibit 3 for identification? [281]

(Thereupon, the document referred to was marked as Respondent's Exhibit No. 3 for identification.)

Q. (By Mr. Palmer) I show you now document marked Respondent's Exhibit 2 for identification and ask you if you can tell us what that is.

A. I never saw that before—wait a minute—I never saw this before to be frank with you. To the best of my recollection I have never seen this.

Q. Well, you have testified that you received from Mr. Tobin sheets of instructions of calls that he desired you to make?

A. Now, just a minute, Mr. Palmer. Were those in that order?

A. No, if I said sheets of instructions, I move to correct that. Mr. Tobin handed me slips of paper

(Testimony of Leonard Lugoff.)

with ads that he used to get from the downtown papers that were cut out ads, that were cut out and pasted on slips of paper. He used to get a big bunch of them every week and he would pick several of these out and say, "Make these calls," but I don't recollect seeing anything like this.

Q. At one time you had a conversation with Johnny Badovinac. Was that in reference to this contract?

A. No, it was in reference to a rumor that Johnny Badovinac was spreading that the management was going to close down the plant if the Guild didn't stop asking for unreasonable things [282] in their negotiations.

Q. When did this conversation take place?

A. It took place sometime during the month of August at a time, Mr. Palmer, when the Guild in its negotiations was accusing the management of spreading rumors of intimidation.

Q. This was August 1939?

A. August, 1939.

Q. Was there a contract then being negotiated?

A. Yes.

Q. A contract for the period of July 1, 1939, to 1940?

A. I think that is what it was for.

Q. And you say the Guild accused the management of spreading rumors that it was going to close down?

(Testimony of Leonard Lugoff.)

A. The Guild at that time was accusing the management of rumors going around the plant intimidating employees.

Q. That was in connection with the conferences, negotiations and conferences being held with Mr. Sargent? A. That is right.

Q. And the Guild negotiating committee?

A. That is right.

Q. Do you recall any meeting when anything was said about that?

A. I don't recall any specific meeting. I know it was taken up two or three times and for some reason, of course, a lot of that testimony was above my head. The management [283] didn't seem, or Mr. Sargent didn't seem to pay any attention to it.

Q. Didn't Mr. Sargent deny that the management was making any such a threat?

A. Mr. Sargent didn't deny it but he claimed he didn't know anything about it and was going to take it up with you.

Q. In the course of negotiations was any threat made by Mr. Sargent?

A. Oh, Mr. Sargent didn't make the threats. You probably misunderstood me, Mr. Palmer. I said the Guild accused the management of intimidating the employees of the Citizens-News through rumors going through the plant that the Guild people would be eventually fired, that the plant was going to close down, and the Guild people would be continually harrassed in their jobs and so forth and so on.

(Testimony of Leonard Lugoff.)

Q. And I asked you if at any negotiating meeting those accusations were made?

A. Yes, the Guild made it to Mr. Sargent.

Q. To Mr. Sargent. And Mr. Sargent made no reply to it?

A. Mr. Sargent made a reply to this effect, that he didn't know anything about it, that he would be glad to take it up with the management.

Q. Didn't Mr. Sargent notify the Guild that the management was making no threats whatsoever?

A. I don't recall an answer being given to the Guild on that. [284]

Q. Then you went to Johnny Badovinac about those charges?

A. Well, there was one particular rumor that was coming from Johnny Badovinac it so happened, at that time.

Q. And you went to him about it?

A. Yes. I considered myself a particular friend of Johnny's and I went, all in good faith to him, and asked him if he was saying such a thing.

Q. Where was Johnny at that time?

A. He was right at his desk.

Q. At his desk? A. Yes.

Q. Johnny's desk is in that section of the office known as the display section; isn't it?

A. Yes, sir.

Q. Now, what time of day was this?

A. It is hard for me to recall what time of day it was. I think it was around—this is merely sup-

(Testimony of Leonard Lugoff.)

position on my part—it was around, we will say, around 11:30.

Q. 11:30 in the morning? A. Yes.

Q. Are there other display desks around Johnny's?

A. Yes, there is. At that time Moulin sat next to Johnny. Montrose sat next to Johnny.

Q. Moulin on one side and Montrose on the other?

A. Yes. And across the desk was Joe Price and Mr. Braxdale. [285]

Q. Two desks across from Johnny's and one desk on each side of Johnny's?

A. The desks were back to back.

Q. Making a total of five desks in the group?

A. Yes.

Q. Johnny's being one of the five?

A. That is right.

Q. Now, was Moulin at his desk at that time?

A. That I can't recollect. The only recollection of people that were around there I have was the people that I had the argument with and that were going to bet me hard earned money that such a thing was going to take place.

Q. Was Montrose at his desk?

A. He may have been, I don't recall.

Q. You don't recall a single display man who was at his desk?

A. I know there were other people in the argument. But there was a little heat and the only thing

(Testimony of Leonard Lugoff.)

I recall is that such a thing took place and the participants in the argument. George Palmer was one. That is, he listened very quietly until after it was all over, then he backed up Johnny and not only backed him up verbally but was willing to bet money on it.

Q. Was Johnny standing up while you were talking with him? A. Sure.

Q. Was he seated when you went over to his desk? [286]

A. No, that I don't recollect. I don't think he was. I think he was standing up.

Q. Do you recall anybody else besides George Palmer being there?

A. No. As I said it is something that the only thing I can recall is the immediate people who took part in it.

Q. What was the first thing said?

A. I asked Johnny—I said, "Johnny, are you giving out the rumor that the management said the plant is going to close down if the Guild keeps on with their unreasonable demands and their negotiations?" Do you want me to go on?

Q. Yes, the whole conversation.

A. He said, "Yes."

I said, "Johnny, I have been up to every one of those negotiations and I know personally that the Guild is asking nothing unreasonable, that at the most they are asking for a few dollars raises for some of the people and they want a little protection

(Testimony of Leonard Lugoff.)

for Helen Brichoux and Karl Schlichter; they want one of the office boys classed as a reporter," and I said, "outside of that, there is no demands that are unreasonable." And I said, "It is very foolish to say that the management would close down a plant employing so many people as the Citizen does over such a thing."

I said, "What you are doing is intimidating the people and getting a hatred up with them against the union," and I said, [287] "If you persist in doing that," I said, "to my mind all you are is a company stooge."

Q. You didn't believe that Johnny's charges were true, did you?

A. Having first hand information as to what took place in the negotiations I didn't see any truth in the things that Johnny was saying.

Q. And you told him that they were very foolish?

A. I told him it was wrong. I told him not only it was wrong but it was intimidating people, getting them fearful of their jobs and such a thing, even if he knew it to be true, would be best to keep to himself. And I said, "When you don't keep it to yourself, you are in a class, to my mind, of a company stooge."

Q. Did you tell him that the charges were very foolish or the threats were very foolish, the rumors were very foolish?

A. I tried to intimate such.

(Testimony of Leonard Lugoff.)

Q. Did you tell him that you thought so?

Mr. Sokol: Thought what?

Q. (By Mr. Palmer) That the charges or the threats or rumors were very foolish?

A. I tried to tell him that. I tried to explain why I thought they were very foolish.

Q. Where is George Palmer's desk in relation to Johnny's desk? [288]

A. George Palmer's desk is about 15 feet away.

Q. In another section of the general office?

A. Yes. George Palmer's desk is on the other side of my desk.

Q. And what is George Palmer's work?

A. George Palmer at that time was credit manager of classified credits.

Q. Of all classified credits?

A. Yes. There were a few accounts that were billed monthly that display had charge of. All the others were under George's jurisdiction.

Q. What did his work consist of?

A. His work consisted of looking over the copy and passing on the advisability of crediting the account and billing it.

Q. Did he have charge of the collections or did he just say whether or not credit should be extended?

A. I think—I don't know for sure. I think he had charge of the classified collectors. I am pretty sure he had charge of the classified collectors as well as O. King credits.

(Testimony of Leonard Lugoff.)

Q. Do you know whether or not he had anything to do with the hiring or engaging of people to work with him?

A. I don't know whether he hired the credit collectors or not.

Q. Who is the credit manager of the Citizen-News? [289]

A. Mr. Smith.

Q. R. B. Smith? A. Yes.

Q. Do you know who his assistant is?

A. No. I haven't the slightest idea who the assistant is. I know your display credits seem to come from three different sources there; that is, there is Mr. Smith at the head of the entire group; Mr. McCormick who is a credit manager, and Mr. Frank Gilman, who was then another display credit manager, and Mr. George Palmer who was classified credit manager.

Q. Three men working under Mr. Smith?

A. Under Mr. Smith.

Q. In delegated departmental work?

A. Yes.

Q. Mr. Smith himself passes on credits, does he?

A. Mr. Smith to my mind passes on credits when the others decide that they are not competent to judge them, then they take it to Mr. Smith.

Q. Now, George Palmer and Johnny Badovinac are the only persons that you recall being present at the time of this conversation?

(Testimony of Leonard Lugoff.)

A. Yes. I may state that that argument got a lot of publicity, that practically—well, it seemed to me that everybody in the plant knew about it because I was stopped [290] on the street after it happened and the people gave me their views on the matter.

Q. By whom were you stopped on the street?

A. Well, Floyd Simonton was one, Patricia Kiloran was another.

Q. They are Guild members, both of them?

A. They are Guild members.

Q. Anybody else?

A. I can't recall anybody else at the present time but it seemed that everybody was in on it.

Q. Did Mr. Tobin ever tell you that he heard the conversation? A. No.

Q. Did he ever refer to the conversation?

A. No.

Q. Did Mr. Young ever tell you that he heard the conversation?

A. I don't believe Mr. Young has stopped me for anything in the seven years that I have been there except for "How do you do" and most of the time he didn't say that. That is no reflection on Mr. Young, I just say I never—

Q. You mean to say he did not ever talk to you about this conversation?

A. No, he wasn't in the habit of stopping and talking to me about anything.

(Testimony of Leonard Lugoff.)

Q. Do you know whether or not he was even in his office when you had the conversation? [291]

A. I don't know. As I said, there was a little excitement around there. Johnny Badovinac at one time was a pugilist and I had an idea that I might get a punch in the nose during the conversation so I was just interested in those people that took part.

Q. You attended most of the Guild negotiations, their meetings? A. Yes.

Q. Other Guild members were present at those meetings? A. Yes, sir.

Q. The Citizen-News unit Guild members?

A. Yes, sir.

Q. Are those others still in the employ of the Citizen-News?

Mr. Sokol: That is objected to. There is no statement as to who they were yet.

Mr. Palmer: Well, I can ask him who they were. I was trying to keep away from any involvement in names.

Mr. Sokol: I will stipulate with you that some of those Guild people who attended the meetings are still employed. X

Q. (By Mr. Palmer) What other Guild members were present at the negotiating meetings?

A. What other Guild members?

Q. Yes.

Mr. Sokol: Now, Mr. Examiner, you see we have

(Testimony of Leonard Lugoff.)

the minutes of these meetings and I can tell you the names of the—— [292]

Mr. Palmer: All right.

Trial Examiner Whittemore: Suppose we do that. Then you can stipulate to it.

Mr. Sokol: On July 19, 1939: Herman Reuter, L. Lugoff, Helen Brichoux, Lida Livingstone, Roger Johnson, Patricia Killoran, Karl Schlichter, Lowell Rodeling, Cliff Wessellman, Floyd Simonton, Elizabeth Yeaman. Guild unit negotiators: Jack Barry, Tom O'Connor, Urcel Daniel, John Cohee.

July 25, 1939—I may say at that first meeting on July 19th, for the management: Willis Sargent and Harold E. Swisher and T. Harwood Young.

Guild members: Floyd Simonton, Selby Calkins, Stanley Speer, Roger Johnson, Pat Killoran, Helen Brichoux, James Fisher and Leonard Lugoff.

August 7, 1939, for management: Willis Sargent, Harold E. Swisher.

Guild negotiators: Morgan Hull, Tom O'Connor, John Cohee.

Guild members: Leonard Lugoff, Floyd Simonton, Lowell Rodeling, Roger Johnson, Stanley Speer, Jim Crow, Helen Ewing, Carl Combs, Harry Minishian, Elizabeth Yeaman, Lida Livingstone.

August 19, 1939, for management: Willis Sargent, Harold Swisher, T. H. Young. [293]

Guild negotiators: Urcel Daniel, Tom O'Connor, Jack Barry, John Cohee.

(Testimony of Leonard Lugoff.)

Guild members: Johnson, Yeaman, Brioux, Lugoff, Crow.

August 31, management: Willis Sargent, Harold Swisher.

Guild negotiators: Phinney, O'Connor, Cohee.

Guild members present: Herman Reuter, Floyd Simonton, Lugoff, Schlichter, Speer, Livingstone, Killoran, Rodeling, Minishian, Combs, Ewing, Yeaman, Brichoux.

And then there was one meeting on March 11, 1940, management: Sargent—that was on the Killoran case—Guild negotiators: Cohee, Barry, Daniel, Washburn. The Guild members present I don't have for that meeting.

Is that all stipulated to?

Mr. Palmer: Yes, sir. We so stipulate.

Q. (By Mr. Palmer) Helen Brichoux is still working for the Citizen-News?

A. So far as I know she is.

Q. Patricia Killoran is still working for the Citizen-News?

A. So far as I know.

Q. Jim Crow is still working for the Citizen-News?

A. I think so.

Q. Lida Livingstone?

A. I am not acquainted with Lida Livingstone. I don't know whether she is working there or not.

[294]

Q. She was at some of these meetings. You don't know her?

(Testimony of Leonard Lugoff.)

A. I know her but I mean not very well.

Q. Floyd Simonton? A. Yes.

Q. He is still working for the Citizen-News?

A. He is.

Q. Helen Ewing? A. That is right.

Q. Carl Combs? A. That is right.

Q. Minishian? A. Yes.

Q. Herman Reuter? A. That is right.

Q. Lowell Rodeling? A. That is right.

Q. Cliff Wessellman? A. That is right.

Q. Stanley Speer? A. Correct.

Mr. Sokol: May it be stipulated that all of those are editorial people except Miss Brichoux?

Mr. Palmer: It may be stipulated that they are all covered by the editorial contract. [295]

Mr. Sokol: Thank you.

Q. (By Mr. Palmer) You referred yesterday to the production of John Starling, a classified solicitor. Do you know who he is? A. Yes.

Q. Will you tell us about his work?

A. I don't know about his work.

Q. You don't know anything about his work?

A. Except that he is employed over in the Valley doing a little classified, a little news, and a little display.

Q. He has charge of the San Fernando office of the Citizen-News?

A. He may have, I don't know.

Q. You don't know where these records came

(Testimony of Leonard Lugoff.)

from that were handed to you by someone else from which you have made your compilations?

A. I understood they come from your monthly report on classified production for the month of March.

Q. You had some other months besides the month of March, didn't you?

A. My figures came from Tobin's desk. I didn't have any comparison that was a comparison of other productions besides my own. My own figures on my own particular production was compiled from Tobin's report that we all had access to.

Q. Now, you testified this morning in handling classified [296] accounts that you sought to get them signed up on monthly contracts?

A. Yes. That is the correct way according to Hoyle to sell classified advertising.

Q. When you left the territory the ads were to keep on running?

A. There is a tendency for your territory to stay up that way indefinitely.

Q. Indefinitely. Now, I would like to have you be a little more definite than that. For how long a period do you think a territory could get along without a salesman and not suffer?

A. Well, I have no experience on that. I notice one of the records brought up a week later showed no difference when nobody was on the territory. It showed no difference in the lineage comparison.

(Testimony of Leonard Lugoff.)

Q. How about the second week and the third week and the fourth week?

A. I really don't know, to be frank with you. I would say offhand at least a month.

Q. That is, business would continue without any attention without any loss in volume at all?

A. No, there would be a slight loss but there wouldn't be any great loss.

Q. Then if it ran that easily why did you not have time to [297] make the calls, all of them that Mr. Tobin asked you to make?

A. I am going into the supposition that during that time there was nobody on that particular territory, that the accounts were serviced, that somebody had to service them. That is why during vacation no matter how good a territory there is, for instance, when Mr. Reid was on his vacation, I took over that, or when Mr. Allen was on his vacation, we divided the territory and there was no particular selling. The account had to be serviced.

Q. Then someone is required on the territory at all times? A. To service.

Q. In order to keep the volume up?

A. That is right.

Q. In March, 1940, you circulated another petition? A. Yes, sir.

Q. Have you a copy of that petition?

A. Yes, sir.

Q. Will you produce that, please?

(Testimony of Leonard Lugoff.)

Mr. Sokol: That is in evidence.

Mr. Palmer: I don't think so.

Let me ask the witness first: You first circulated one petition, Mr. Lugoff? A. Yes.

Q. To which you got three signatures besides yourself? A. Yes. [298]

Q. Besides your own? A. Yes.

Q. Then you circulated a contract?

A. Yes.

Q. Then you circulated another petition?

A. Yes.

Q. And in Board's 19 the third petition, the third document that you circulated?

A. I imagine it is. I don't remember what 19 is.
(Counsel hands document to witness.)

The Witness: Yes.

Q. You obtained no signature to that petition at all? A. I didn't have any time to.

Q. Now, let's see, you started to circulate it on March 15th? A. Just about that time, yes.

Q. And you were discharged on March 30th?

A. That is right.

Q. You had no time to circulate it at all?

A. I circulated it but here is the thought that I was getting over in that petition: I was a little bit enthused about it and I went around and sold the idea. Of course, it embodied a statement that you had made from time to time that you would be willing to meet with any majority or would be glad to

(Testimony of Leonard Lugoff.)

meet with any majority in any department and nego- [299] tiate a contract with them. I embodied that in the petition and I tried to sell the idea. I didn't ask anybody to sign it. I just asked them what they thought of it.

Q. Yes.

A. That of making such a contract of things that you had already given us. You already promised severance pay, vacation pay, sick leave, and things that we already had. In other words, I wanted to see what classified would think of such a proposition and by the time I got through explaining it to everybody—and I might add in this petition on account of my enthusiasm I didn't confine my efforts to those people that were a little bit fearful about their jobs, I went just a little bit further and showed it to people that I never showed the others to before.

Q. People outside the classified department?

A. No, inside the classified department.

Q. Proceed.

A. And I didn't ask anybody to sign it. I showed them what it was, what I had in mind and asked them what they thought about it and when I was all set to go out and try to get signatures on it, it was just a day too late.

Q. How many told you that they thought it was good?

A. Everybody I showed it to thought it was good.

(Testimony of Leonard Lugoff.)

Q. How many did you show it to?

A. I showed it to, I think, all but three in the department. [300]

Q. That would be nine then of the department you showed it to, eight other than yourself?

A. Yes.

Q. You showed it to eight others and they thought it was a good petition?

A. Yes, because it was doing away with that fear angle. It was just asking for something we had already got and it seemed to me effective that way.

Q. When you wrote here: "Workers of the classified department of the Hollywood-Citizen-News, believing, as the management has stated from time to time, that all workers of all departments in the Citizen-News are entitled to the right and privileges—"

Mr. Sokol: Are you going to read that?

Mr. Palmer: —"obtained by the editorial department in its contracts with the management—"

Mr. Sokol: Mr. Palmer, I think it is unnecessary to read the document.

Mr. Palmer: I am going to stop there for this question and then I will proceed. After I have finished my question, Mr. Sokol, I will be very glad to pause while you make your objections.

Mr. Sokol: Well, I just wanted to say our general procedure is when documents are in evidence that we don't read them. It saves time because they are already in evidence. [301]

(Testimony of Leonard Lugoff.)

Trial Examiner Whittemore: Well, let's hear his question.

Mr. Palmer: Mr. Reporter, will you refer to the question as far as I got?

(Record read by the reporter.)

Q. (By Mr. Palmer) When you wrote that, Mr. Lugoff, you sincerely believed in the truthfulness of that statement? A. Yes.

Q. You did? A. Yes.

Q. When you wrote these words: "Taking the management at its word when it further states that they, the Citizen-News, although believing that all the workers in all departments are entitled to these rights and privileges, will not bind themselves in any way to recognize such rights and privileges until the time that such departments do obtain a majority of workers in their respective departments and do then petition a bargaining agent under the National Labor Relations Act."

Did you sincerely believe in the truthfulness of that statement? A. Yes.

Q. You have heard the management state that all the workers of all the departments are entitled to the rights and privileges contained in the Guild contracts, have you?

A. That is the supposition. [302]

Q. Well, you had heard the management state that? A. Yes.

Q. And you believed it?

(Testimony of Leonard Lugoff.)

A. It hadn't been knocked out of my head at that time; yes, sir.

Q. Well, is it knocked out of your head now?

A. Well, it is inclined to be shaded a little bit.

[303]

Q. All right, proceed and explain.

A. I believe, Mr. Palmer, I was fired on account of my union activity. Up to the time I was fired I held with that.

Q. Is there anything in this document that says anything about union activities?

A. No, but in order to get a majority in your department you have to have union activities. You have to have something to go out and get that majority. That is what I was doing.

Q. You received severance pay, didn't you?

A. That is right.

Q. Under the identical provisions that are set forth in the Guild contract?

A. Yes, sir. There was nothing binding, as I stated, in that contract that you had to give me those. That is the point I was trying to bring out.

Q. Do you know whether or not when others have been discharged not covered by the Guild contract, whether they have received the severance pay as called for in the Guild contract?

A. To the best of my knowledge, since the Guild has started you have paid severance pay to people who were fired.

(Testimony of Leonard Lugoff.)

Q. And we paid severance pay before the Guild was started, didn't we?

A. If you call two weeks severance pay, it can be classed as [304] such.

Q. Well, didn't you say that you first got four weeks severance pay on your first discharge?

A. The Guild was already organized in editorial at that time.

Q. Yes.

A. Very much so, in fact, they had a contract.

Q. Don't you know that the same severance pay scales as you were paid in August, 1938, had been in effect for several years?

A. No. I was under the impression that that severance pay, a week for every week that you had been there, come into effect when the Guild was established in the Citizen-News.

Q. That was your impression?

A. That was my impression.

Q. And it might have been wholly wrong?

A. I don't think I was wrong.

Q. Well, we will show——

A. I have been around the Citizen-News quite a while.

Q. We will show that you were, Mr. Lugoff.

A. I was?

Mr. Sokol: Let counsel argue, but please don't do it yourself, Mr. Witness.

Q. (By Mr. Palmer) Long before the Guild

(Testimony of Leonard Lugoff.)

there had been two weeks vacation allowed to employees of the Citizen-News? [305]

Mr. Sokol: What is the materiality of that?

The Witness: That is——

Mr. Sokol: I object to that on that ground.

Mr. Palmer: I think it is material in view of the witness' testimony, who is seeking to imply that——

Mr. Sokol: I will withdraw my objection. I assume there is only one question or so along that line.

The Witness: The only thing, Mr. Palmer, that I meant to imply there was that without a contract in your immediate department that you were just promising those things, that there was nothing to uphold it.

Q. (By Mr. Palmer) You thought that a written contract would be better for you? A. Yes.

Q. It would be more businesslike?

A. It would not be businesslike, it would be more binding.

Q. That is all right. I have no objection to the opinion of Mr. Lugoff. I think you are right.

Now, you had a conversation with Florence Whitebook in reference to this petition to which we have just referred, did you not, Mr. Lugoff?

A. Yes.

Q. She asked you in substance why you wanted to stick your neck out?

A. That is right. [306]

(Testimony of Leonard Lugoff.)

Q. Where was that conversation held?

A. In the classified department phone room.

Q. Was anybody else present?

A. There may have been some people present, I don't recollect, but I talked privately to Miss Whitebook and asked her what she thought of the petition.

Q. Did she tell you what she thought of the petition? A. No, but she told me——

Trial Examiner Whittemore: I believe that was stricken this morning.

Mr. Palmer: If it was stricken, that is my fault. I believe your Honor is right.

Trial Examiner Whittemore: Well, I didn't want to take up a lot of unnecessary time.

Q. (By Mr. Palmer) Did you talk with Frank Gilman about it?

A. Yes. I beg your pardon, I didn't talk to Frank Gilman about that petition.

Q. You did have a talk with Frank Gilman about the Guild?

A. About the Guild, or he had a talk with me about the Guild and the Guild's activities.

Q. What did Frank Gilman say?

A. Frank Gilman said that he had it from——

Q. What is his work?

A. What is his work?

Q. Yes. [307]

A. He is credit manager of some of the display accounts, or was credit manager at the time.

(Testimony of Leonard Lugoff.)

Q. What do you mean by credit manager? You still mean that he works under Mr. Smith, don't you?

A. He works under Mr. Smith and passes on credits.

Q. Mr. Smith is the credit manager?

A. Yes.

Q. And Mr. McCormick is his assistant?

A. That, I don't know. They all had titles of credit manager. I know Mr. Smith was the head of it. I don't know that there was any assistant manager to Mr. Smith.

Q. You knew Mr. Smith was over them?

A. I knew Mr. Smith was final word in anything in credits.

Q. You knew he was over all those men?

A. They were under him.

Q. They were under him?

A. That is right.

Q. You knew that Mr. Gilman had been discharged?

A. I didn't know that he had been discharged, no.

Q. Now, Mr. Gilman is not a Guild member, is he? A. No, very emphatically not.

Q. You didn't know whether he was discharged after you were discharged? A. No.

Q. The Monday morning after your last discharge, when you [308] went in to see Mr. Tobin

(Testimony of Leonard Lugoff.)

and you told Mr. Tobin that you thought the discharge was as much of a surprise to him as it was to you, did Mr. Tobin make any comment to you at that time?

A. He didn't make no comment at all.

Q. None whatsoever?

A. Not on the firing. I didn't ask him for any comment. I merely stated what I did this morning, that is was as much a surprise to Tobin as to myself and I knew that he didn't know what calls there were to be made that morning and what changes of copy there were to be put through and I would be very glad to make them and make a list of the calls that were supposed to be made.

Q. You didn't at that time meet the young man who took over your route?

A. I don't think there was anybody that took over my territory for at least a week, maybe two weeks after that.

Q. Were you acquainted with Wallie Sellers?

A. Yes.

Q. Who worked as a messenger boy on the copy desk?

A. Yes, I was acquainted with him.

Q. To your knowledge, had he ever previously done any classified soliciting?

A. To my knowledge he had never sold any classified advertising.

Q. This loan of \$300 that you said you had obtained, was that [309] a loan on your car?

A. I think it was, yes. [310]